MINERALS COUNCIL OF AUSTRALIA

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EXECUTIVE SUMMARY

The next frontier: Securing new mining investment to capitalise on global opportunities

Two decades of unprecedented investment by the Australian resources sector (facilitated by previous bipartisan reforms) have produced a bigger resources sector delivering record export values. The resources sector earns more export income for Australia than all other industries combined, generating a record $221 billion in 2017-18, or 55 per cent of total exports.

Resources companies employ approximately 240,000 people directly in highly paid, highly skilled jobs, predominantly in remote and regional Australia. Average earnings in the resources sector are around $140,000 a year, more than 64 per cent higher than the average for all industries.

Minerals companies have paid $204 billion in the 12 years to 2016-17 in taxes and royalties, funding schools, hospitals and infrastructure across Australia. At the same time, the Productivity Commission has repeatedly confirmed that Australian mining receives 'negligible' industry assistance.

The world's resources and energy needs are projected to continue growing in the 21st century. The economies of China, India and South-East Asia are using increasing amounts of steel, aluminium and copper to increase their industrial capacity, create more high-density housing in large cities, and build transportation networks, communications systems and electrical grids. In addition, demand for consumer products – such as cars, televisions, laptops, mobile 'phones and refrigerators – is rising rapidly as middle-class incomes increase.

Australia is well-placed to supply these growing markets but this opportunity is not guaranteed. It demands consistent government policies that encourage investment and productivity growth and thereby make the Australian economy more competitive and prosperous.

Australian mining is a global technology leader and there is an increasing role for automation, data analytics, mechatronics, robotics and artificial intelligence that will see Australian mining continue to be at the forefront of innovation. But other nations are also developing new resources with the latest technologies at competitive costs. Consequently, Australia's tax and regulatory settings are becoming ever more important to maintaining our comparative advantage in minerals and energy exports.

The Australian resources that have been identified and developed over the past century will need to be supplemented by discoveries of new deposits – deposits that will be more remote and harder to extract. The changing nature of skills is at the heart of this challenge. Workplaces will need to be redesigned, new skills developed and existing ones enhanced. This means that the minerals workforce will need to be even more adaptable and diverse in the future.

This submission argues that future prosperity for all will not be secured without a new wave of reform to make the Australian economy more robust, productive and flexible. A recent survey of MCA members shows that companies are most concerned about the direction of workplace relations, taxation and energy policy; that mining finance is getting harder to obtain and approval times for projects are too long; that new minerals resources need to be identified; and that the key challenge is attracting and retaining skilled labour supported by a dynamic and responsive education system.

Of course, the benefits of a new wave of productivity-enhancing reforms would not be confined to mining enterprises, workers or regions. The Productivity Commission has pointed out that reforms implemented in the 1980s and 1990s – notably reducing tariffs, liberalising markets and introducing enterprise bargaining – have helped to sustain 27 years of uninterrupted growth in output and incomes across the economy. Further, the commission found that this growth has significantly improved living standards for the average Australian household in every income decile.

Conversely, the opportunity cost of forgoing additional economic reforms will continue to rise as international competition for capital and talent expands and intensifies. There is an urgent need for bold policy action to ensure mining can keep delivering substantial benefits to all Australians.

Priorities for the Australian minerals industry

- Health and safety:
  - Pursuing a nationally consistent, risk-based preventative work health and safety system, supported by industry-specific regulation. A safe workplace is the Australian minerals industry's foremost and unchanging priority.
- Tax:
  - Stimulating investment by maintaining a stable and competitive tax system that is consistent with international rules and does not tax business inputs. Fuel tax credits ensure that a significant input to mining, agriculture and tourism (namely diesel) is not taxed and that an effective road-user charge is not applied to off-road use of fuel.
- Workplace relations:
  - Promoting productivity growth at the enterprise by allowing for flexibility and choice in employment arrangements (including labour hire and service contracting) and confining permitted content in bargaining to direct employment matters. In the Australian minerals industry, enterprise bargaining and flexible work practices have delivered attractive salaries and working conditions for the industry's changing workforce.
- Future minerals workforce:
  - Modernising tertiary and vocational courses, content and delivery to provide the knowledge and skills needed in the redesigned workplaces of the future supplemented by temporary skilled migration scheme for specialist skills. This will improve the quality of and opportunity for the existing workforce and the next generation.
- Environmental stewardship:
  - Ensuring clear and consistent obligations under a framework that promotes ecologically sustainable development by collaborating for progress towards the United Nations Sustainable Development Goals, without unnecessary duplication and delay on projects. Development and sustainability can and should go hand in hand.
- Energy and climate change:
  - Driving efficient investment in additional generation assets (including upgrades of existing plant) capable of supporting the competitiveness of Australia's energy dependent and trade-exposed industries, and pursuing credible and verified international permits and carbon capture and storage to offset and reduce CO_2 emissions. This is the most efficient means of achieving the twin goals of stimulating economic development while meeting the climate change policy objectives articulated in the Paris Agreement.
- Exploration:
  - Increasing funding for precompetitive, public geological survey work. Investment today in the public good of precompetitive exploration is essential to discovering and developing the minerals resources of tomorrow.

Recommendations

The strategic reform agenda for resources agreed to in December 2018 by the Council of Australian Governments (COAG) Energy Council is an excellent opportunity to prosecute overdue structural reforms and to stimulate further development of the nation's minerals for the benefit of all.

The MCA submits that this framework should enshrine the same sound principles that informed the successful structural reforms made by previous governments, including:

- Policymakers should start from the assumption that open, transparent and competitive markets will generally deliver more efficient and fair outcomes than monopolistic or opaque markets, or resource allocation by government determination
- Where there is compelling evidence that regulation is warranted, that regulation should be minimal and effective, so policy objectives are achieved at least cost
- Tax settings should be stable, internationally competitive and avoid the taxation of business inputs, to encourage additional and ongoing investment in real capital goods
- Workplace relations rules should facilitate productivity growth at the enterprise level, closely align individual effort with reward, offer choice and flexibility in workplace arrangements, and maintain a strong safety net of wages and conditions
- Governments should not attempt to shield particular industries from competition, or sustain jobs through subsidies or regulation, because this ultimately transfers costs to other industries and workers.

This is a task for all governments, which is why the focus of COAG is so important. At the federal level, the government can best support the continued growth of the mining industry by reducing taxes, improving workplace relations rules, expediting project approval processes, easing the overall regulatory burden, supporting greater exploration and improving the cost and reliability of energy.

The following recommendations are intended to provide governments with a pathway to ensure that mining can deliver more for Australia in the future.

Fiscal policy and economic contribution of the Australian minerals industry

- The government should consider policy impacts on the mining industry across the whole business cycle, rather than just at peak times when higher commodity prices deliver short-term gains to companies and the economy.
- To address low wage growth, the government should pursue reforms that stimulate additional investment in new capital goods, improve worker productivity and increase the demand for labour.
- The government should reduce public debt by restraining spending growth rather than by increasing taxes, as higher taxation discourages consumption, investment and entrepreneurship.

Occupational health and safety

- The MCA supports a nationally consistent, risk-based preventative occupational health and safety regulatory system, supported by efficient industry-specific regulation. Such a system would ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk, or pursuing continuous improvement of safety and health outcomes by companies.
- The minerals industry does not support the introduction of industrial manslaughter offenses into work health and safety laws as arguably there is no gap in existing legislation that needs to be filled. The MCA supports the Australian Government response to the Senate Education and Employment References Committee report, which states: 'Where there has been a

workplace death, all of those responsible can be prosecuted under the existing offences regime and the general criminal manslaughter provisions.'

Internationally competitive taxation

- To stimulate new investment in mining (and therefore future flows of income and tax revenue) the Federal Government should reduce Australia's internationally uncompetitive corporate tax rate for large business. Australia's large businesses suffer high effective company taxes compared to other advanced economies and countries in our region. Other stimulatory measures – such as accelerated depreciation or investment allowance for capital equipment – should also be expanded.
- The Fuel Tax Credit scheme must be retained to prevent the taxation of business inputs.
- As a capital importing nation, it is essential that Australia's interest deduction rules are appropriate, balanced and aligned to international best practice. Any tightening of these rules will increase the effective tax rate on Australian investment.

Productive workplace relations

- Flexibility and choice have delivered greater productivity, more jobs, higher wages, and greater capacity to adapt and compete in world markets. Australia's system of bargaining is underpinned by a robust safety net and multi-layered award system. It creates a set of conditions that apply across a sector and can only be modified if the employee is better off overall. This system of flexibility, choice and protection has worked; mining companies and employees have used bargaining to help drive better outcomes in the workplace. But it can be improved. The MCA recommends that the Federal Government:
  - Maintain the flexibility and competitiveness that is achieved through use of labour hire and service contractors
  - Preserve the productivity gains of enterprise bargaining and resist any return to pattern bargaining or industry-wide bargaining
  - Confine permitted content – over which protected industrial action can be taken – to employment matters that directly affect employers and employees at the enterprise
  - Refocus adverse action provisions to discourage unreasonable claims
  - Rebalance union right-of-entry provisions to prevent unwarranted disruptions to operations
  - Reform greenfields agreements to encourage investment in new projects
  - Allow workers earning above $145,400 (the high-income threshold for unfair dismissals) to enter into individual agreements
  - Institute a more relaxed test for the Fair Work Commission to apply when considering applications to terminate expired enterprise agreements.

Future minerals workforce

- The MCA supports the range of reforms advanced by Resources 2030 Taskforce and the Productivity Commission to generate a high-quality education system that promotes skills formation and prepares students for technology adoption, use and diffusion, including:
  - Developing a more coordinated national curriculum for earth sciences and resources sector qualifications at the tertiary and vocational education and training (VET) levels
  - Introducing a more graduated system of student assessment to signal to employers the level of proficiency in VET
  - Developing an objective VET accreditation system that signals the quality of skills, regardless of how they are acquired, to encourage the growth and acceptance of new models of skills formation that are faster, cheaper and more flexible

- Improving student outcomes by providing affordable, high quality university education with qualifications that are relevant to labour market needs.

- The future minerals workforce will be even more diverse, geographically distributed and digitally connected. It will require broad ranging skills and competencies using both accredited and non-accredited training. Government will need to work closely with industry to ensure that accredited training is responsive to industry needs.
  - Government should not put blanket requirements on skills funding as part of licencing or other regulatory arrangements.
- Strategies such as fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements, together with an effective skilled migration program, help sustain mining activity in regional areas.
- Temporary skilled migration is a small but important supplement to industry employment. The scheme would be improved by:
  - Dropping the arbitrary upper age limit of 45 years at time of application for permanency to ensure that industry is able to secure knowledge experts, senior managers and leaders (including chief executives) for key positions to aid Australia's competitive advantage in the sector
  - Removing the three years' work experience requirement for international students graduating from Australian universities, to transition from a temporary graduate visa to industry – and securing the skills industry needs now
  - Placing Mining Engineering on the Short-term Skilled Occupations List (STSOL) to address the immediate need across industry and provide a genuine pathway toward permanent residency for graduates
  - Allocating funds from the Skilling Australians Fund proportionally to each industry's use of the temporary skilled migration visas to support skilling and upskilling for that and ancillary industries, and address potential and perceived cross-subsidisation of other industry sectors
  - Abolishing labour market testing to remove the unnecessary and ineffective administrative requirement and recognise the well-established and historically consistent industry practice of seeking skilled migration as a last-resort means of obtaining critical but hard-to-fill skills.

Streamlined environmental approvals

- To reduce unnecessary delays and uncertainty for mining projects, the MCA recommends that the Federal Government:
  - Work closely with state governments, including through the COAG Energy Council to:
    - Benchmarking and encouraging best practice policies and regulation in line with Energy Council commitments and adherence to COAG best practice principles
    - Streamline state and federal approval processes while maintaining effective environmental protection regulatory frameworks
    - Encourage improved coordination within state and territory level approval processes
    - Maintain the primacy of ministers in approval decisions
    - Improve advisory panel processes by enabling proponents to engage directly
  - Prevent or minimise nuisance or vexatious legal challenges to approved projects
  - Remove the duplicative water trigger for coal seam gas and large coal developments

- Remove uranium mining, milling, decommissioning and rehabilitation from the nuclear trigger in the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act)
- Remove nuclear energy prohibition from EPBC Act
- Improve the efficiency of environmental assessment and approvals processes by:
    - Setting information requirements to manage clearly defined risks, rather than to address every conceivable risk, i.e. regulatory requirements to be commensurate with risk and ability for its effective mitigation
    - Increased use of alternative assessment mechanisms in federal environmental approvals, including particular manner provisions and approval on referral information, again, with level of assessment commensurate with risk and ability for its effective mitigation
    - Coordinating environmental offset requirements between federal and state governments, so that they reinforce rather than duplicate each other.

Social performance

- All governments have an important role to play in building community confidence in regulation and maximising the shared benefits of mining. The minerals industry supports the COAG Energy Council's proposal to identify best-practice community engagement and benefit sharing by industry, government and other bodies.
- The Australian Government should create a modern regional development and sustainability framework to combine the economic stimulus and social investment of minerals development with other ideas, initiatives and funding from governments, other sectors and local communities.
- The mining industry supports a more equitable re-investment of royalties and taxes paid by the mining industry into the revenue producing regions..

Indigenous partnerships

- Measured reforms to the Native Title Act will improve certainty and efficiency for the minerals industry, Traditional Owners and other parties.
- The Australian Government should continue to fund initiatives that support effective operation of Native Title organisations, including representative bodies and service providers, and support economic development.
- Targeted reforms to enable Prescribed Bodies Corporate to manage native title monies in a way that maximises intergenerational benefit.

Exploration

- To support additional exploration activity the government should increase funding for pre-competitive geological survey work which is an important public good. This should include funding to expand programs that deliver key aspects of the UNCOVER roadmap such as:
    - Geoscience Australia's Exploring for the Future program
    - Industry research partnerships such as the Minex CRC
- The government should retain immediate deductibility for exploration expenditure and the Junior Minerals Exploration Incentive.

Affordable and reliable energy with lower emissions

- Energy policies should be technology-neutral, with all low emissions options treated equally, including renewables, gas, nuclear, high efficiency, low emissions (HELE) coal technologies and carbon capture and storage (CCS)
- Policies to address emissions and reliability should also be designed to reduce energy costs – not just limit price rises
- The proposed Reliability Guarantee must deliver sufficient levels of lowest cost dispatchable energy supplies available 24/7 with the objective of lowering prices and ensuring reliability. Upgrades to existing plant need to be considered.
- The MCA recommends the continuation of the Emissions Reduction Fund and Safeguards Mechanism. The Emissions Reduction Fund has delivered significant abatement at around $12/tonne
- The minerals industry acknowledges that sustained global action is required to reduce the risks of human-induced climate change. The Australian minerals sector supports a measured transition to a low emissions global economy which includes Australia's participation in global agreements such as the Paris Agreement with greenhouse gas emission reduction commitments from major emitting nations. Access to credible and verified international offsets will enable a least-cost approach to abatement, lower the cost of meeting Australia's Paris commitments and deliver associated environmental benefits such as reducing deforestation.

Deregulation

- The MCA recommends that the Federal Government implement a permanent program of regulatory reduction and improvement by:
  - Considering non-regulation options for achieving policy objectives
  - Ensuring any new regulations are efficient, in that they:
    - Proceed from an established case for regulatory action
    - Enshrine the best (or least worst) of available options
    - Set unambiguous objectives that do not overlap
    - Manage risks proportionately rather than prescriptively
  - Minimising the existing stock of regulation.
- The MCA recommends that the Federal Government liberalise coastal shipping by:
  - Introducing a single permit system allowing unrestricted trade for both domestic and foreign vessels
  - Ensuring that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

Free trade and open investment

- The government should seek to attract international investment by streamlining and liberalising foreign investment screening processes
- The government should continue to pursue free trade agreements and strengthen public support for trade.

1. THE AUSTRALIAN MINERALS INDUSTRY: ECONOMIC CONTEXT

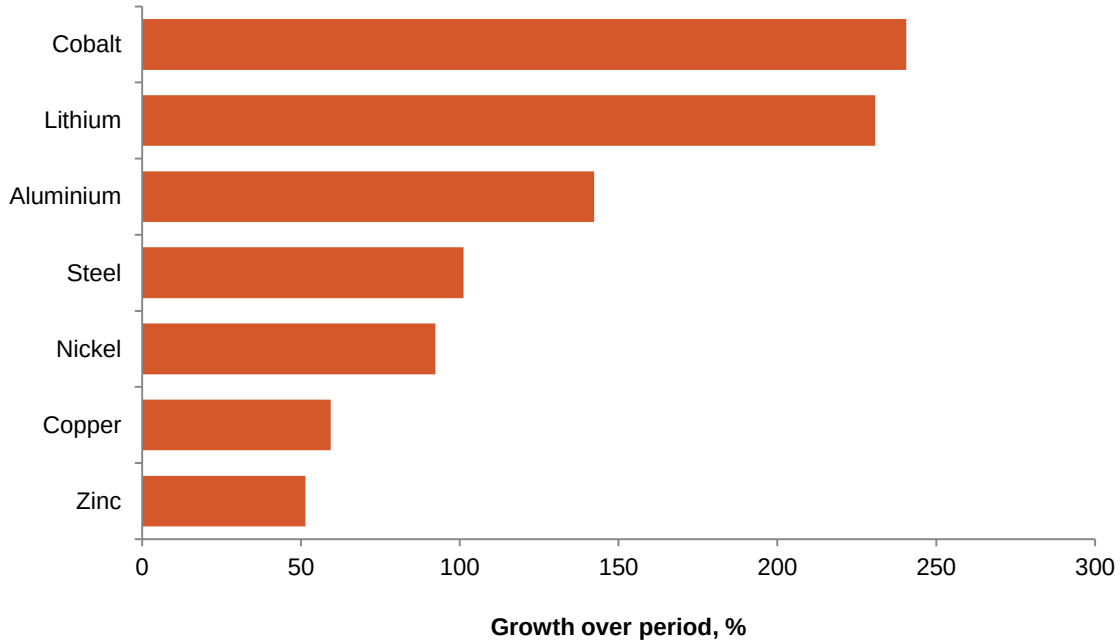
- World demand for mineral and energy resources will continue to increase as the incomes of highly populated emerging economies, particularly in Asia, converge to the level of development of advanced nations. Australia has the opportunity to benefit substantially from this growth by prioritising policies that support the further development of its resources sector and facilitate free trade.
- The Australian economy is performing well but faces challenges such as low wage growth, stagnant productivity and high debt. Policy reforms that increase the flexibility of the economy and improve business' capacity to respond to risks and opportunities should be a priority for the government.
- The Australian Government should limit spending growth over the forward estimates and prioritise tax reforms, including company tax reforms, which support greater economic growth by providing incentives for entrepreneurial behaviour, reward new start-up businesses and encourage existing businesses to expand.

The world economy

World economic growth in the 21st century has shifted with the rise of China, India and other emerging economies providing the main impetus for expansion. The economic growth rates in emerging economies have been consistently higher than the OECD since the global financial crisis in 2008; however, even these growth engines are also now starting to slow. In 2019 the World Bank expects GDP growth rates will moderate further as a result of the impacts of rising trade disputes and higher borrowing costs associated with tightening monetary policy in advanced economies.[1]

In the long-term, the global economic outlook remains broadly unchanged with industrial expansion and urbanisation in emerging economies that are adopting more market-oriented economic policies likely to continue underpinning economic growth. As a result the world's resource and energy needs are projected to continue growing in the 21st century as highly populated emerging economies, particularly in Asia, converge to the level of development of advanced nations.

Chart 1: Growth in world metal consumption, 2000 - 2017



Source: Department of Industry, *Innovation and Science, Resources and Energy Quarterly – December 2018*.

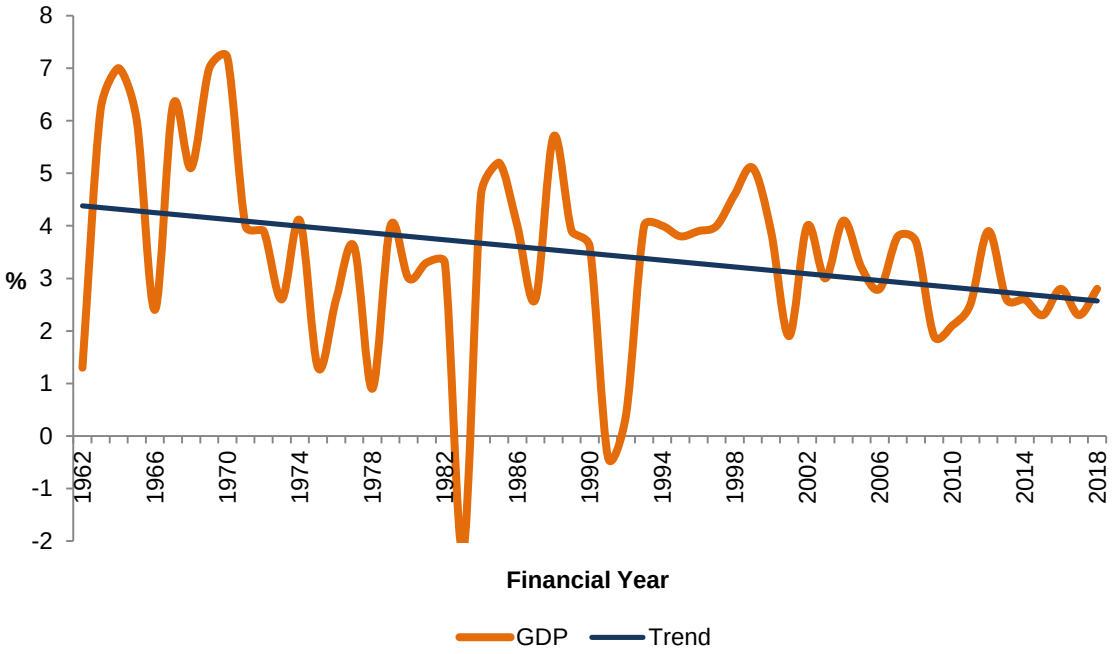
[1] World Bank, *Global Economic Prospects*, released 8 January 2019.

To date, the Australian mining boom has been heavily concentrated in the iron ore, coal and liquefied natural gas sectors. There is significant opportunity for Australia to maintain these advantages while expanding its production of other key industrial minerals that are necessary for our trading partners to reach even higher stages of development. Australia has substantial natural endowments of copper, gold, nickel, lithium and rare earth elements that are essential in the production of the advanced consumer items that the emerging middle classes of Asia are already consuming in large quantities and can be expected to purchase more of as their incomes rise further.

Domestic economy

The Australian economy grew 2.8 per cent in 2017-18 and recorded its 27th consecutive year of annual growth. This record of strong economic growth has made Australia the envy of many advanced nations that have experienced either low growth or contractions in the decade since the global financial crisis. Since its last annual decrease in GDP in 1990-91, the Australian economy has grown by 133 per cent in real terms, or at an average annual rate of 3.1 per cent per year.[2] In comparison, economic growth in advanced economies around the world has averaged 2.1 per cent over the same period.[3] Nevertheless, the Australian economy has been growing by lower amounts in recent years and over the long-term (see chart 2). Policy reforms that support greater productivity growth and encourage greater business investment are necessary to reverse this trend.

Chart 2: Annual GDP growth in Australia



Source: Australian Bureau of Statistics, Australia System of National Accounts, 2017-18, ABS cat. no. 5204, released on 26 October 2018.

Economic challenges in Australia

Low growth in wages

Wage growth has been occurring at much lower levels over the last five years and this has coincided with a downturn in total company profits in Australia which until recently were declining.[4] While wage growth rates still remain above inflation, which is also at very low levels, policy reforms are needed to address the causes of this drop in wage growth. However, workplace policy changes that reduce flexibility and arbitrarily force higher wages will not provide a long-term solution to this issue. Such actions will unnecessarily increase operating costs for business and produce unintended consequences such as lower job growth and investment in Australia. The government should instead

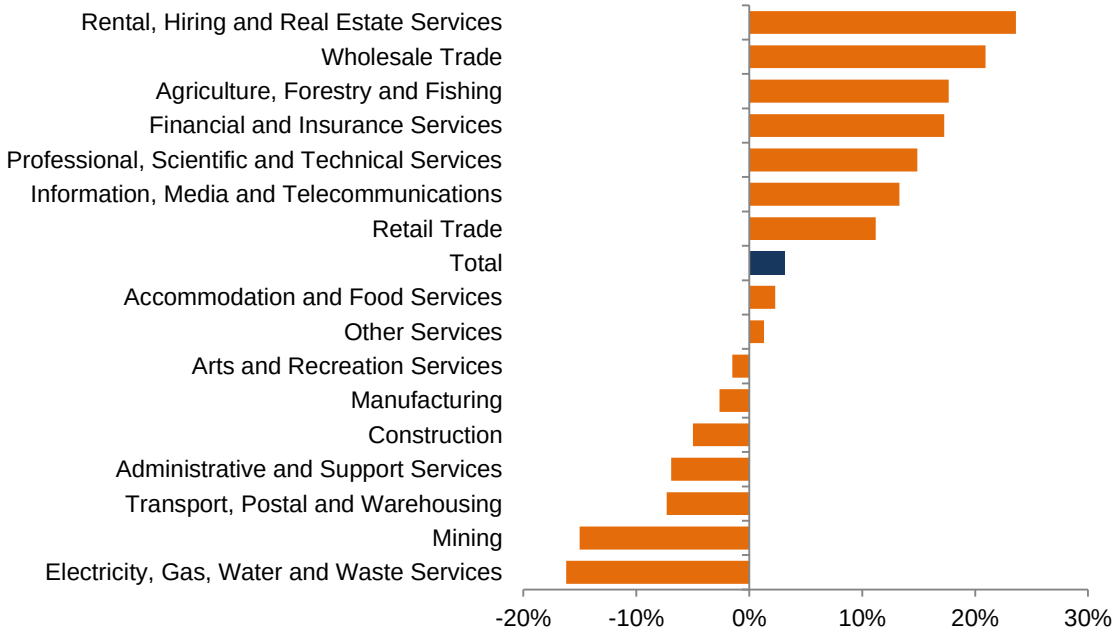
[2] Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released on 26 October 2018.
[3] International Monetary Fund, World Economic Outlook Database, October 2018 edition.
[4] Australian Bureau of Statistics, *Business Indicators, Australia, Sep 2018*, ABS cat. no. 5676 released on 3 December 2018.

consider a set of reforms that drive greater demand for labour via increased business activity and accelerate investment in new capital to improve worker productivity. This submission outlines policies in these areas which the MCA recommends the government implements in order to lift wage growth rates across Australia.

Stagnant productivity growth

As shown in chart 3, private sector productivity growth in Australia has been at very low levels for the last ten years and has declined for several key industries. This productivity decline is despite significant increases in the capital stock of the Australian economy and increase in human capital via rising educational attainment in the workforce.

Chart 3: Multifactor Productivity growth in Australian industries, 2007-08 to 2017-18



Source: Australian Bureau of Statistics, *Estimates of Industry Multifactor Productivity, 2017-18*, cat. no. 5260.0.55.002, released on 3 December 2018.

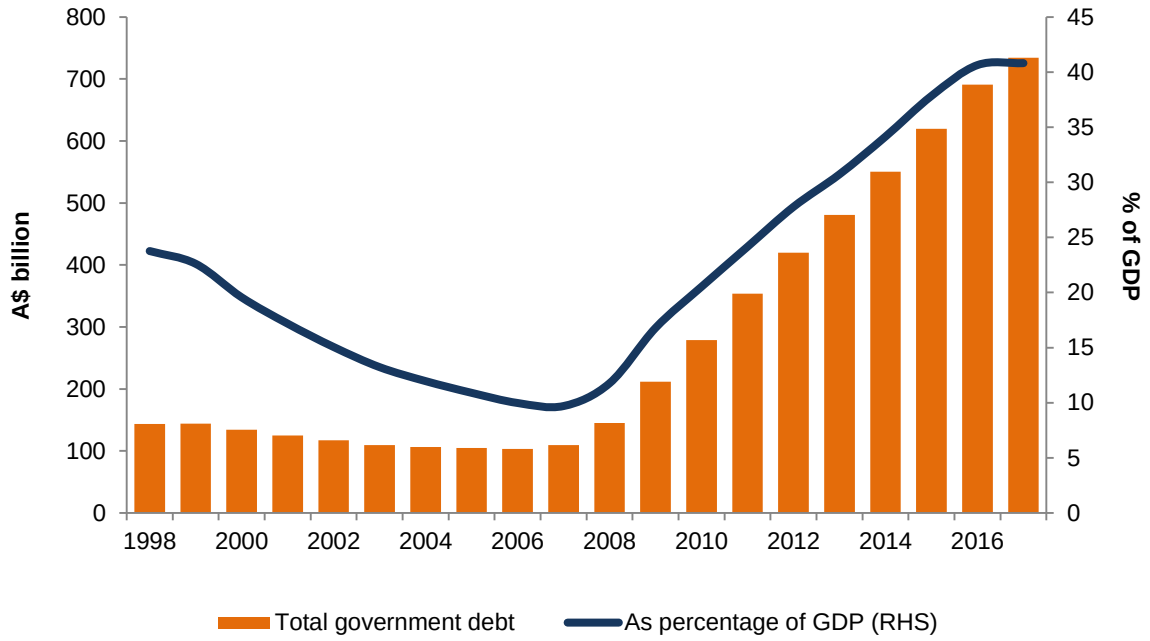
While the performance and profitability of enterprises are ultimately the responsibility of managers, their decisions are constrained – and sometimes prescribed – by policies and regulations. Policy settings can only be regarded as good for productivity if they encourage firms to invest in capital and allow them to manage the use of that capital efficiently. Given that productivity growth in Australia's private sector has been sluggish for more than a decade, there is an urgent need for federal and state governments to advance critical productivity-enhancing reforms.

A growing debt burden

Debt has played a significant role in Australia's economic growth since the global financial crisis and has enabled greater investment and consumption levels despite the low rate of productivity growth. As shown in chart 4, government debt in Australia, including all levels of government, has increased from $109 billion in 2007 to $734 billion in 2017 – an increase of 570 per cent which is the second highest debt growth rate in the OECD.[5]

[5] International Monetary Fund, World Economic Outlook database, viewed 10 January 2019.

Chart 4: State and Federal Government gross debt



Source: IMF, World Economic Outlook database, accessed 10 January 2019.

Australian governments have relied heavily on debt as to support economic growth but now must utilise different policy levers to support growth through greater productivity. Although Australia's government debt as a proportion of GDP is currently low compared to other nations action must be taken now to reduce reliance on debt as a growth engine and the future burden of interest payments that come with it.

The Australian Government should limit spending growth over the forward estimates and prioritise tax reforms, including company tax reforms, which support greater economic growth by providing incentives for entrepreneurial behaviour, reward new start-up businesses and encourage existing businesses to expand.

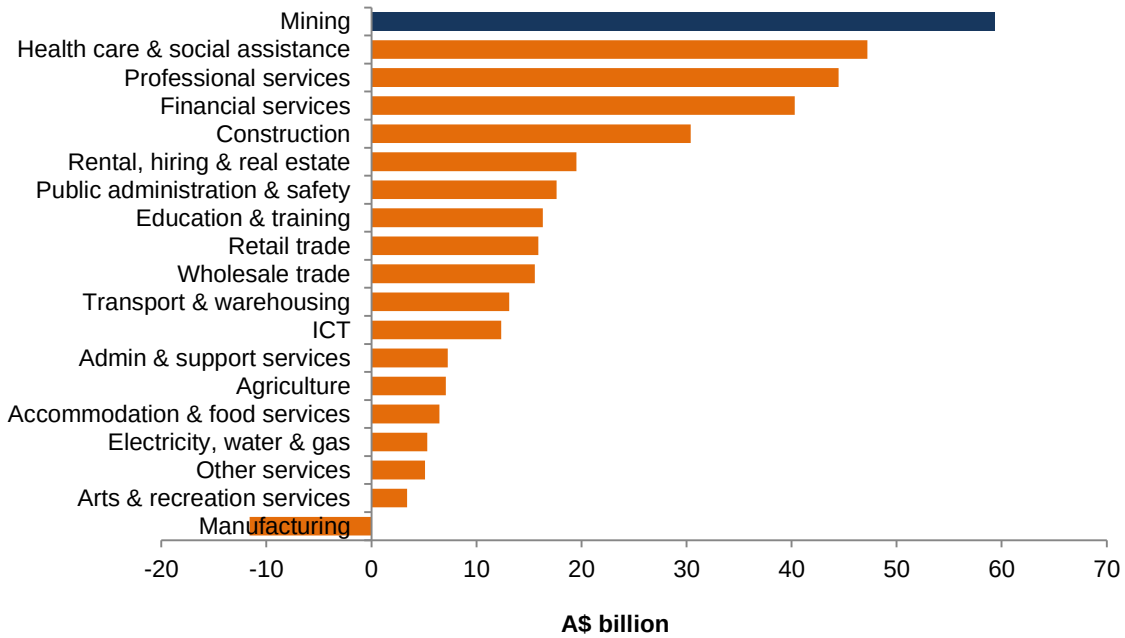
2. ECONOMIC CONTRIBUTION OF THE AUSTRALIAN MINING INDUSTRY

- The resources sector is a key industry in the Australian economy. It is Australia's largest source of export revenue, provides high-paid jobs for thousands of people and pays billions of dollars to governments each year in taxes and royalties.
- Mining is a cyclical business with fluctuating business conditions arising from its exposure to volatile international commodity prices. When developing policies that affect the mining industry the government should consider the impacts on the industry through the complete business cycle and not just in peak times when higher commodity prices deliver short term gains.
- The MCA welcomes the COAG Energy Council's decision to convene a Strategic Resources Advisory Group and to establish a framework for regular benchmarking of policies and regulation against best practices – both across Australia and internationally.

Mining's economic contribution to the Australian economy

The resources sector is a key industry in the Australian economy that has underpinned a rise in incomes and prosperity across the country. It is Australia's largest source of export revenue, provides high-paid jobs for thousands of people and pays billions of dollars to governments each year in taxes and royalties. As shown in chart 5, the resources sector has been the largest contributor to economic growth in Australia over the 10 years to 2017-18. The industry is able to deliver these benefits because it is a global leader in technological innovation and one of the most productive resources industries in the world.

Chart 5: Contribution to GDP growth 2007-08 to 2017-18



Source: Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released 26 October 2018.

As a result of the growth in the resources sector, its share of Australia's Gross Domestic Product (GDP) increased from 5.7 per cent in 2002-03 to 7.6 per cent in 2017-18.[6] This growth has been

[6] Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released 26 October 2018.

underpinned by a larger capital stock which is five times larger compared to 2002-03 and higher resources employment which has more than doubled in the same period.[7]

The mining industry also supports a large supply chain of professional services providers, construction companies, logistics systems and equipment manufacturers often known as the Mining Equipment, Technology and Services (METS) industry. According to a study by Deloitte Access Economics the economic output of the mining and METS industry in 2015-16 was worth around $236 billion a year – or 15 per cent of the Australian economy.[8]

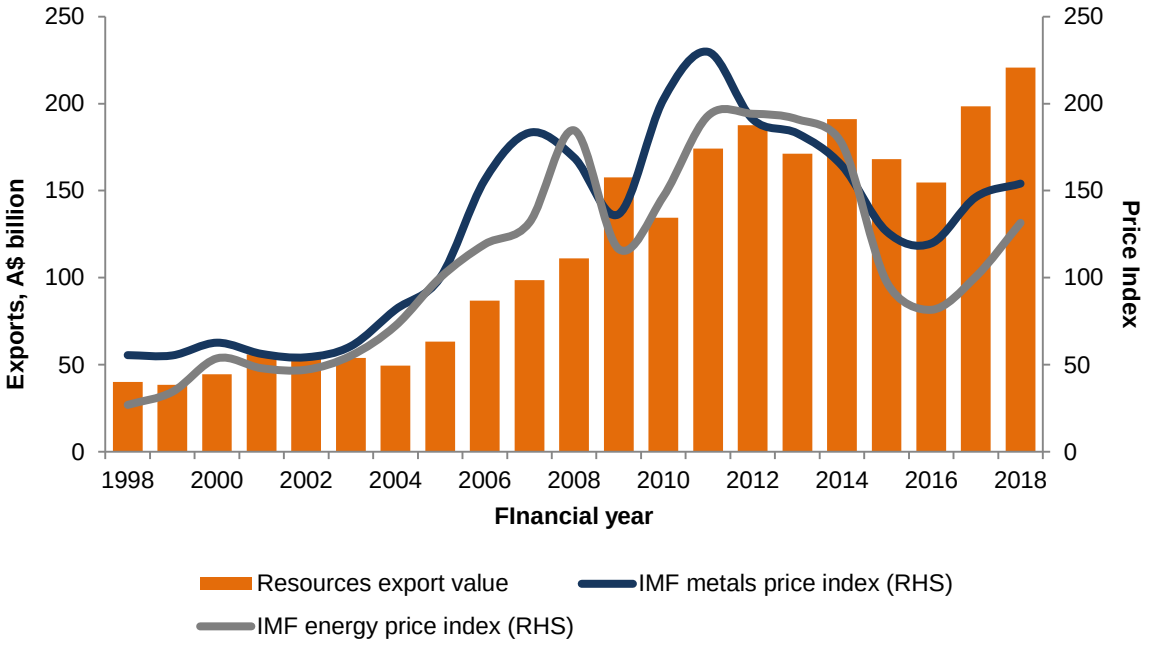
Resources companies directly employ approximately 240,000 people in highly paid, highly skilled jobs, predominantly in remote and regional Australia. Average earnings in the resources sector are around $140,000 a year, more than 64 per cent higher than the average for all industries.[9]

Exports

Mineral and energy commodities are Australia's largest source of export revenue and have increased by 395 per cent since the start of the mining boom in 2001.[10] In 2017-18 resources exports were a record high $221 billion and accounted for 55 per cent of Australia's total export revenues.[11] This income stream is being driven by higher volumes of key minerals exports, reflecting the transition of the mining boom from the investment phase to the production phase.

As shown in chart 6, commodity prices increased moderately in 2018 following the severe downturn in 2015 and 2016, but remained well below the highest levels of the price phase of the mining boom. The recent record high resources export revenue has instead been underpinned by higher production of key mineral and energy commodities such as iron ore, coal, gold and LNG.

Chart 6: Australia's resources exports



Source: Australian Bureau of Statistics, *International Trade in Goods and Services, Australia, October 2018*, ABS cat. no. 5368.0 released 6 December 2018.; International Monetary Fund.

Compared to the peak of the commodity price cycle in 2011-12, Australia is now producing significantly higher volumes of its key mineral exports. In the ten years to 2017-18 the Australian

[7] Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released 26 October 2018.
[8] Deloitte Access Economics, *Mining and METS: engines of economic growth and prosperity for Australians*, 29 March 2017.
[9] Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2018*, ABS cat. no. 6302.0, released 16 August 2018.
[10] Australian Bureau of Statistics, *International Trade in Goods and Services, Australia, October 2018*, ABS cat. no. 5368.0 released 6 December 2018.
[11] ibid..

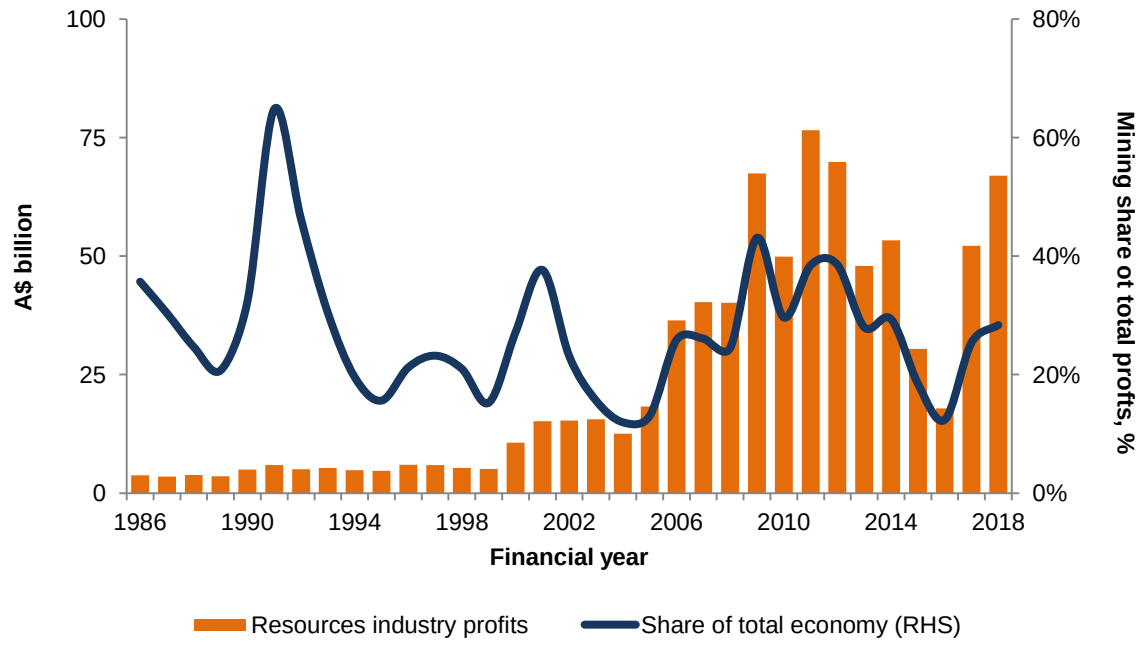
resources sector attracted $591 billion of investment in new mines, energy projects and processing facilities.[12] This investment has led to production increases over the last five years of 62 per cent for iron ore, 24 per cent for gold, 19 per cent for bauxite and 12 per cent for coal.[13] The recent surge in investment in new lithium mines in Western Australia has also led to a 410 per cent increase in lithium production in just the last two years.[14]

Importantly, this investment occurred without significant government intervention or subsidies. It was instead made based on the commercial merits of each project and the ability to generate an economic return. The Productivity Commission has confirmed in successive reports that Australian mining receives 'negligible' assistance from government. The commission found that the effective rate of combined assistance for the mining industry (i.e., the ratio of assistance to output) is just 0.2 per cent. While the Productivity Commission attributed $522 million in budgetary assistance to mining in 2016-17, most of this amount ($402 million) consisted of offsets claimed under the R&D tax incentive – a measure applicable to all industries.[15]

Resources sector profits

In 2017-18 resources sector profits (including mining, oil and gas companies) totalled $66.9 billion and accounted for 28 per cent of all company profits generated in Australia (see chart 7).[16] Resources sector profits have increased substantially through the mining boom and have supported a large increase in tax payments and financial returns to the millions of Australians who hold shares in mining companies – both directly and indirectly through their superannuation funds.

Chart 7: Australian resources industry, profit before income tax



Note: Profits include the oil and gas industry which are classified as part of the mining industry in the classification structure used by the Australian Bureau of Statistics.
Source: Australian Bureau of Statistics, *Business Indicators*, cat. no. 5676, released 3 December 2018.

As the resources sector is also a driver of broader economic activity in Australia the growth in its profits have flowed throughout the Australian economy in the 21st century. While resources sector profits (including oil and gas) have grown substantially in the past 18 years, so have profits in a number of industries in resources sector supply chains, such as manufacturing (up 120 per cent),

[12] Australian Bureau of Statistics, *Private New Capital Expenditure and Expected Expenditure, Australia, Sep 2018*, ABS cat. no. 5625 released 29 November 2018.
[13] Department of Industry, Innovation and Science, *Resources and Energy Quarterly – December 2018*, viewed 23 January 2019.
[14] Department of Mines, Industry Regulation and Safety, *2017-18 Major commodities resources file*, viewed 23 January 2019.
[15] Productivity Commission, *Trade and Assistance Review 2016-17*, released on 26 April 2018, pp. 34, 102f.
[16] Australian Bureau of Statistics, *Business Indicators*, Cat. No. 5676, released 3 December 2018

construction (up 661 per cent), and professional, scientific and technical services (up 5,800 per cent).[17] As a result of these flow-on effects, profits across the entire economy have increased 501 per cent and the resources sector share of total profits in 2017-18 was the same in 1999-00.[18]

The rise in resources industry profits and the benefits that this has brought to the broader economy cannot be taken for granted. As shown above in chart 7, profits in the resources industry are cyclical and can fluctuate substantially owing to the sector's exposure to world commodity prices. Australian resources industry profits dropped from an all-time high of $76.5 billion in 2010-11 to $17.9 billion in 2015-16 – a decrease of 75 per cent in just five years due to a severe downturn in world commodity prices in the period. When developing policies that affect the mining industry, the government should consider the impacts on the industry through the complete business cycle and not just in peak times when higher commodity prices deliver short term gains to companies and the economy.

Outlook for the Australian mining industry

The world's resources and energy needs are projected to continue growing in the 21st century. The economies of China, India and South-East Asia are using increasing amounts of steel, aluminium and copper to increase their industrial capacity, create more high-density housing in large cities, and build transportation networks, communications systems and electrical grids. In addition, demand for consumer products – such as cars, televisions, laptops, mobile 'phones and refrigerators – is rising rapidly as middle-class incomes increase.

Australia is well-placed to supply these growing markets but this opportunity is not guaranteed. It demands consistent government policies that encourage investment and productivity growth and thereby make the Australian economy more competitive and prosperous.

Australian mining is a global technology leader and there is an increasing role for automation, data analytics, mechatronics, robotics and artificial intelligence that will see Australian mining continue to be at the forefront of innovation. A recent report prepared by EY for the MCA estimates that implementing already existing technologies across the Australian mining industry could deliver productivity gains of up to 23 per cent.[19] In addition to improving the performance and safety of existing mines, the new innovative exploration and mining technologies could also lead to a new wave of investment in Australia. Deeper deposits or mineral systems that were previously considered uneconomic could be developed with these new technologies which would support new jobs and regional economic growth across Australia.

These new technologies require significant capital investment – investment which is increasingly more difficult for Australian mining companies to access due to rising costs and excessive regulation. Other mining regions are also emerging that aim to develop their resources and are competing with Australian companies for a limited pool of capital funds. Consequently, the tax and regulatory settings which influence project economics are becoming more important to maintaining our comparative advantage in minerals and energy exports.

[17] Australian Bureau of Statistics, *Business Indicators*, Cat. No. 5676, released 3 December 2018.
[18] ibid..
[19] EY, *Future of work: economic analysis of the implications of technology on mining*, paper commissioned by the MCA (forthcoming).

3. HEALTH AND SAFETY

- The minerals industry supports a nationally consistent, risk-based preventative work health and safety (WHS) regulatory system, supported by industry-specific regulation to deliver benefits based on greater certainty, consistency and efficiency.
- The industry requires timely access to federally held health and safety data to better inform operational health and safety improvement initiatives.
- The industry does not support the introduction of industrial manslaughter offenses into the model work health and safety laws as it views these as inconsistent with accepted principles of criminal law.

An industry committed to health and safety

The minerals industry's number one value and commitment is the safety and health of its workforce, where everyone who goes to work in the industry returns home safe and healthy. The minerals industry is firmly committed to the principle that every individual, regardless of where they work, whether as a direct employee or contractor, and whatever tasks they undertake, should have the same high standard of workplace safety. The industry has set itself the ambitious goal of becoming free of fatalities. MCA member companies maintain that:

- All fatalities, injuries and industrial diseases are preventable
- No task is so important that it cannot be done safely
- All hazards can be identified and their risks managed
- Everyone has a personal responsibility for the safety and health of themselves and their workmates.

A nationally-consistent, risk-based preventative work health and safety (WHS) regulatory system, supported by industry-specific regulation, would deliver benefits based on greater certainty, consistency and efficiency in the industry achieving its goal. It would also help to ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk and the continuous improvement of safety and health outcomes by companies.

The MCA continues to advocate for:

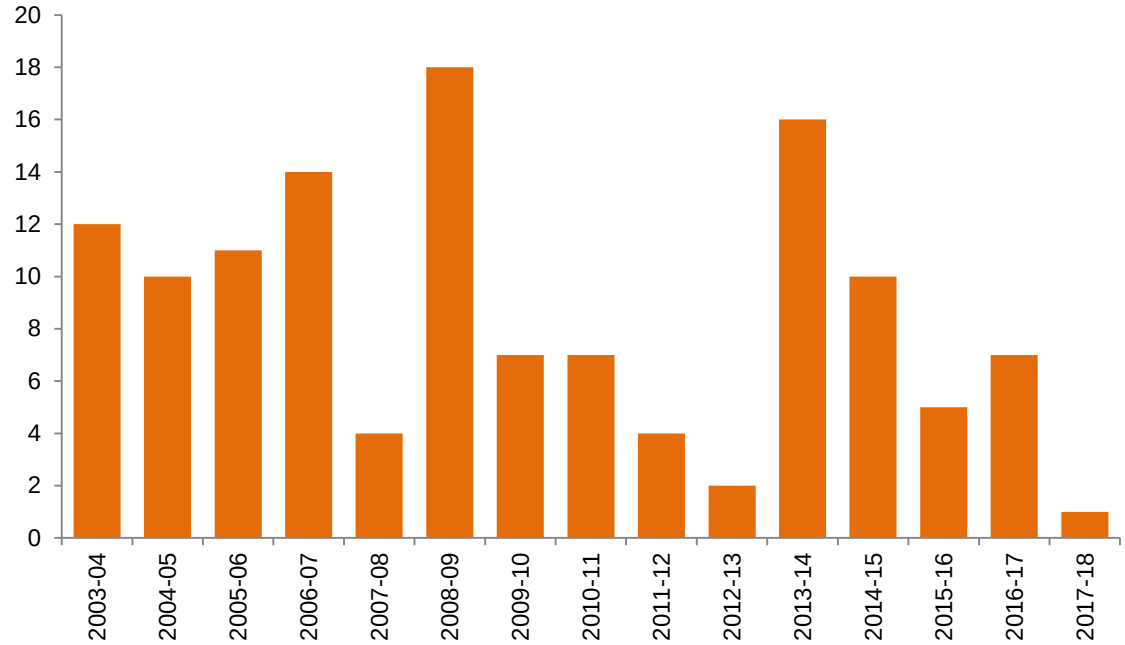
- Continuous improvement, where all parties work together in support of a safety culture based on trust and openness, not an adversarial legal approach based on a blame culture
- Regulatory practice based on consistency, transparency, probity, clarity of role, flexibility and rational pragmatism
- An enforcement rationale based primarily on the desire to improve WHS standards at a particular mine and prevent further incidents by sharing learnings across the mining industry.

The MCA believes that the industrial manslaughter offences applicable in the Australian Capital Territory and Queensland (excluding the Queensland mining industry) and being considered as part of the model WHS Act are inconsistent with accepted principles of criminal law and should not be supported.

An increase in fatalities in 2013-14 resulted in the industry embarking on initiatives to arrest this rise, including sharing and learning lessons from significant incidents and working with the International Council of Mining and Metals (ICMM) to publish practical guidance on preventing the most serious types of health and safety incidents.[20] This direct action has resulted in a decrease in industry fatalities.

[20] International Council of Mining and Metals, *Health and safety critical control management good practice guide*, London, 2015.

Chart 8: Declining Australian minerals industry fatalities



Source: MCA

The MCA's *Blueprint for Mental Health and Wellbeing* is another signature industry initiative that provides a framework to promote wellbeing, as well as reduce the risks and impacts of mental illness.[21] The blueprint identifies key directions for the industry and recommends evidence-based strategies which can be applied at the company and site level.

Recommendations

- The MCA supports a nationally consistent, risk-based preventative occupational health and safety regulatory system, supported by efficient industry-specific regulation. Such a system would ensure that compliance challenges do not detract from the practical tasks of identifying, managing and minimising risk, or pursuing continuous improvement of safety and health outcomes by companies.
- The minerals industry does not support the introduction of industrial manslaughter offenses into work health and safety laws as arguably there is no gap in existing legislation that needs to be filled. The MCA supports the Australian Government response to the Senate Education and Employment References Committee report which states: 'Where there has been a workplace death, all of those responsible can be prosecuted under the existing offences regime and the general criminal manslaughter provisions.'[22]

[21] Minerals Council of Australia, *Blueprint for Mental Health and Wellbeing*, Canberra, September 2015.
[22] Australian Government, Response to the Senate Education and Employment References Committee report: *They never came home-the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia*, Canberra, December 2018.

4. INTERNATIONALLY COMPETITIVE TAXATION

- Stable and internationally competitive tax settings are essential for stimulating business investment, especially in capital-intensive industries like mining. Australia's 30 per cent company tax rate is simply too high for a capital importing country. While other countries have lowered company tax burdens, Australia's headline corporate tax rate has been frozen at 30 per cent since 2000.
- The mining industry delivers significant value to Australia each year. Deloitte Access Economics analysis shows that the mining industry paid $203.6 billion in company tax and royalties in the 12 years between 2005-06 and 2016-17. In 2016-17 alone, Australian mining companies are estimated to have paid $12.1 billion in company tax – around one in every five dollars of Australia's company tax take.
- To support continued investment mining the government should:
  - Reduce Australia's internationally uncompetitive tax rate for large businesses or use other stimulatory measures such as accelerated depreciation and investment allowance for capital equipment to reduce the overall tax burden on companies
  - Continue to allow fuel tax credits for diesel to prevent taxation of business inputs
  - The R&D tax incentive should be maintained in its current form and not distorted by restricting eligibility on the basis of industry, firm size, R&D intensity or any other arbitrary criterion
  - Maintain current thin capitalisation rules.

Mining makes a large tax contribution

Official ATO data, tax transparency data and analysis by respected economists demonstrate the large tax contribution made by mining to federal and state revenues. Deloitte Access Economics (DAE) analysis shows that the mining industry paid $203.6 billion in company tax and royalties in the 12 years between 2005-06 and 2016-17.[23] In 2016-17 alone, Australian mining companies are estimated to have paid $12.1 billion in company tax – around one in every five dollars of Australia's company tax take.

The royalties paid by mining companies are also a key source of funding for the states. These payments contribute to funding essential government services, such as nurses, police, firefighters and ambulances, and public infrastructure. State budget papers show royalty payments to the states have tripled in ten years, increasing from $3.6 billion in 2006-07 to $12 billion in 2017-18.[24]

Competitive company tax and royalties will improve growth prospects

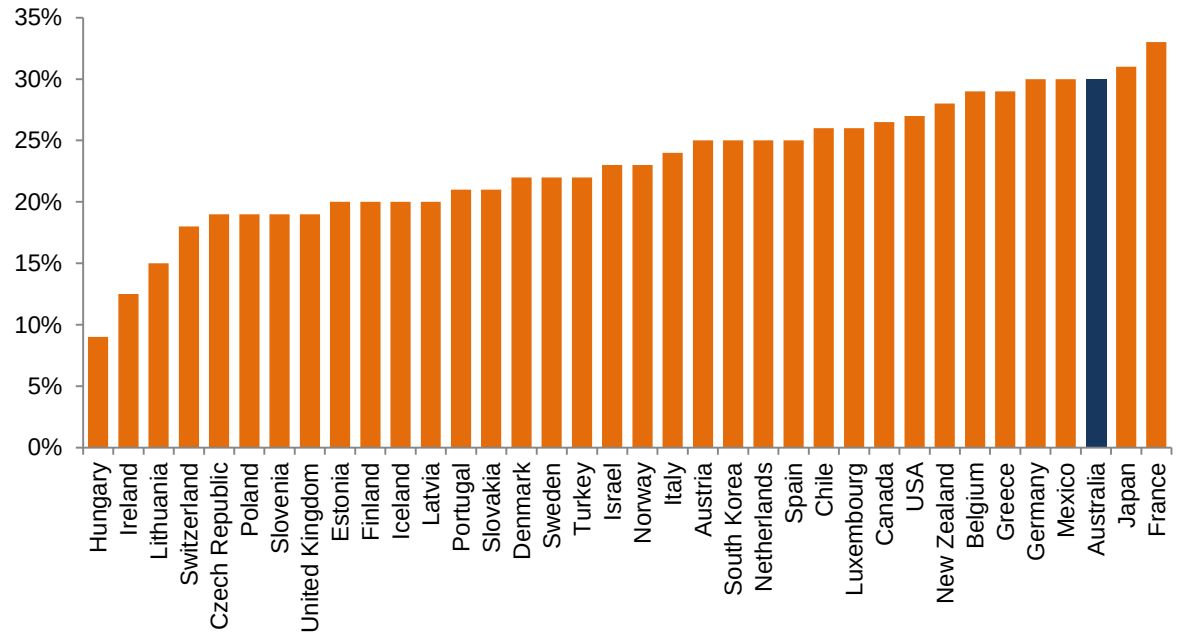
A competitive tax system is critical for the Australian minerals industry, which employ complex production techniques and highly skilled labour to transform natural endowments into valuable exports. The industry is highly capital intensive and characterised by high-risk exploration outlays, large upfront capital commitments (with high sunk costs), long-life assets, cutting-edge technologies and long lead times to profitability. Australia faces fierce competition from other resource-rich economies to capture resource development opportunities.

Australia's 30 per cent company tax rate is simply too high for a capital-hungry country. While other countries have lowered company tax burdens, Australia's headline corporate tax rate has been frozen at 30 per cent since 2000 when it was last lowered to be in line with the then OECD average (30.8 per

[23] Deloitte Access Economics, *Estimates of royalties and company tax accrued in 2016-17*, report prepared for the Minerals Council of Australia, MCA, 4 April 2018.
[24] State of New South Wales (NSW Treasury), *Report on State Finances 2017-18*; State of Victoria (Department of Treasury and Finance, *Financial Report 2017-18*; State of Queensland (Queensland Treasury), *Annual Report 2017-18*; Government of Western Australia, *2017-18 Annual Report on State Finances*; Government of South Australia, *Final Budget Outcome 2017-18*; Northern Territory Government (Department of Treasury and Finance), *Treasurer's Annual Financial Report 2017-18*; Government of Tasmania, *Treasurer's Annual Financial Report 2017-18*.

cent). Since 2005, Australia has slipped from having the 14th highest company tax rate to the equal fourth-highest in 2018 in the OECD (see chart 9). With planned reforms in France and Belgium, Australia is on track to have the second highest company tax rate by 2020.

Chart 9: OECD company tax rates



Source: KPMG, Corporate Tax Rate Tables.

The combination of a high headline company tax rate and a broad base in the absence of investment allowances or accelerated depreciation of investment costs delivers Australia a high and uncompetitive *effective* company tax rate. Australia's *effective* tax rate (including corporate income taxes, sales taxes on capital, and other capital-related taxes) is 6th highest in the OECD at 28.7 per cent which is a substantial 9.5 percentage points higher than the OECD average.[25]

Australia cannot continue to impose such a high tax burden on new investment on our manufacturing, services and mining industries and expect to be a competitive location for globally mobile capital to increase investment, jobs and wages. As Dr Jack Mintz of the University of Calgary has warned: 'Australia should not be left out in the cold. At this point, Australia is ill-prepared to deal with the global implications of the US tax reform.'[26]

Stable fuel tax, exploration and R&D arrangements are vital to mining's competitiveness

Fuel Tax Credits (FTCs) are critical to a diverse range of regional industries reliant on diesel including mining, agriculture and tourism. In the case of mining, diesel fuel is the top three expenses for many open cut mines and consumption can account for up to one quarter of operating costs at some mines.

FTCs are not a tax subsidy. FTCs are based on the fundamental tax policy principle that business inputs should not be taxed – the same principle that underpins the GST. FTCs also ensure that fuel excise, as an effective road user charge, is not applied to off-road use of fuel. Further, the minerals industry is a builder of roads that service their projects and local communities. Bi-partisan support for FTCs is grounded in sensible tax policy. Any reduction to FTCs would simply amount to a new tax on regional industries and have a significant, negative and disproportionate impact on regional Australia.

The mining industry spent $1.9 billion on research and development (R&D) in 2015-16.[27] A significant amount of R&D occurs in environmental and safety work. The R&D tax incentive is an effective, economy-wide, market-driven measure that encourages investment in innovation. It should be

[25] Jack Mintz & Philip Bazel, *Australia's investment challenge in wake of 2018 US tax reform*, a policy paper commissioned by the Minerals Council of Australia, MCA, March 2018.
[26] ibid..
[27] Australian Bureau of Statistics, *Research and Experimental Development. Businesses, Australia, 2015-16*, cat. no. 8104, released 15 September 2017.

maintained in its current form and not distorted by restricting eligibility on the basis of industry, firm size, R&D intensity or any other arbitrary criterion.

Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018 which proposes to introduce an arbitrary 'intensity threshold' for eligibility for the R&D Tax Incentive would remove support for a large number of businesses investing in R&D in Australia. This bill should be amended to remove this element of the R&D reform package but retain important integrity improvements to the R&D Tax Incentive provided by the bill. Removing the modest amount of support for R&D investment would only undermine Australia's reputation for innovation through the R&D Tax Incentive which has suffered from frequent changes by successive governments over recent years driven by the search for revenue 'saves'.

Integrity of Australia's tax system

Australia should remain in step with international consensus on Base Erosion and Profit Shifting (BEPS) reforms. As a capital importer, Australia's tax rules need to be carefully designed to ensure legitimate investment is not harmed. Well-designed legislation coordinated with international moves will ensure that identified 'tax mischief' is targeted, and unintended consequences are mitigated.

Successive Australian Governments have implemented a series of changes to strengthen corporate tax laws. The ATO has repeatedly stated that Australia has robust corporate tax laws and most companies do the right thing. ATO Commissioner Chris Jordan recently noted *'I am satisfied we have the law, the funding, the capability and strategy to reduce the large market gap over time'*[28]. The recent measures should now be allowed to operate and be assessed in due course.

Australia's approach to debt deduction (thin capitalisation) rules should be consistent with OECD best practice. The tax treatment of debt is a critical influence of the effective tax rate of investing in Australia. Australia's thin capitalisation rules need to be designed for a capital importing economy reliant on foreign investment in capital-intensive industries and be targeted at the tax mischief.

Poorly designed thin capitalisation rules that are inconsistent with OECD best practice, that apply retrospectively and disregard Australia's economic interests as a capital importer may impact legitimate debt funding arrangements that are at arm's length, commercially justifiable and don't involve high interest rates. Clear consultation with industry and OECD approaches must be taken to avoid unintended impacts of thin capitalisation reform proposals.

The MCA supports meaningful and globally-consistent tax transparency that minimise compliance burdens. The mining industry has a demonstrated commitment to transparency. In Australia, these include the Voluntary Tax Transparency Code and the implementation of the Extractive Industry Transparency Initiative (EITI), both of which the MCA supports.

The MCA strongly supports the government's effort to progress to full implementation of the EITI in 2019 through our active participation on the Multi-Stakeholder Group. Considerable work has gone into developing a model that is relevant to the Australian extractives industry and regulatory environment based on the successful Australian pilot which commenced in 2011.

Recommendations

- To stimulate new investment in mining – and therefore future flows of income and tax revenue – the government should reduce Australia's internationally uncompetitive corporate tax rate for large business. Other stimulatory measures – such as accelerated depreciation or investment allowance for capital equipment – should also be expanded.
- As the Australian minerals industry already faces an effective tax rate of 51 per cent, there is a compelling case to maintain critical business deductions, including the Fuel Tax Credit scheme and the immediate deductibility of exploration expenditure.
- It is also essential that Australia's thin capitalisation (interest deduction) regime is maintained to provide certainty for large-scale projects already underway and to encourage new investment.

[28] Commissioner Chris Jordan AO, *Address to the National Press Club*, 5 July 2017.

5. PRODUCTIVE WORKPLACE RELATIONS

- Australia needs a modern workplace system that supports productivity to sustain future growth in living standards. The Federal Government should:
  - Maintain competitiveness, flexibility and choice in employment arrangements, including the use of labour hire and service contractors
  - Preserve the productivity gains of enterprise bargaining and resist any return to pattern bargaining or industry-wide bargaining
  - Confine permitted content – over which protected industrial action can be taken – to employment matters that directly affect employers and employees at the enterprise
- The MCA broadly supports the Productivity Commission's workplace relations reform agenda, which the commission has estimated would boost the Australian economy by $850 million every year. Further, the MCA recommends that the government:
  - Allow high-income earners to enter into individual agreements
  - Institute a more practical test for the Fair Work Commission to apply when considering applications to terminate expired enterprise agreements.

Efficient use of capital depends on flexible workplace relations

Successive governments have recognised that flexible workplace relations, underpinned by a sound safety net, are critical to a dynamic and prosperous economy. The decentralisation of workplace relations in the 1990s was driven by the same objective of adaptability and efficiency that propelled the floating of the Australian dollar, the lowering of tariffs and the pursuit of national competition policy.

Regulation cannot sustain jobs or guarantee lasting real wage increases. Only productive and competitive enterprises can deliver high wages and expanding employment opportunities

The ability to modernise workplaces is vital to the competitiveness of the Australian minerals industry, which is increasingly focused on integrating new technology and ideas into its operations. The old industrial relations model – rigid and adversarial – is less and less relevant to the structure of the Australian economy and the needs and expectations of Australian employers and employees.

Separate reviews by the Fair Work Act Review Panel (2012) and the Productivity Commission (2015) have identified a number of areas in which the *Fair Work Act 2009* could be improved. Yet despite the modesty of these proposals and their essentially bipartisan character, attempts to implement them have failed to pass through parliament.

Moreover, there are proposals to make Australia's workplace relations rules even more rigid, including by restricting the terms on which labour hire can be engaged and facilitating pattern bargaining across enterprises in the same industry.

The facts about labour hire and service contracting in Australian mining

The share of permanent employees in the resources sector is high (84 per cent) compared to other industries. [29] Nonetheless, the sector does make use of labour hire workers and service contractors. Labour hire is generally understood to involve an agency on-hiring the services of an agency worker to a host business for a service fee, with the agency remaining the employer of the worker. Labour hire is different from contracting, in which an entity provides workers to perform discrete pieces of work (or projects) and manages those workers itself.

[29] Australian Bureau of Statistics, *Characteristics of Employment, Australia, Aug 2018*, ABS cat. no. 6333.0, released 29 November 2018.

According to the latest available data from the Australian Bureau of Statistics, 9.8 per cent of people employed in the resources sector were hired through labour-hire firms, comparable to manufacturing (11.3 per cent), utilities (10.2 per cent) and financial and insurance services (10.0 per cent).[30]

Mining companies use labour hire arrangements for a variety of reasons, including:

- As a means of sourcing skills in short supply
- For work that is specialised or limited in duration, such as planned maintenance shutdowns or rehabilitation
- Where demand for labour has increased but the sustainability of that demand is uncertain. Labour hire gives producers flexibility to increase and decrease their workforces within short timeframes that do not exist under standard enterprise agreements.

Labour hire also provides skills and experience to new workers and can be a stepping stone to permanent employment.

Labour hire workers in the resources sector are generally highly paid and highly skilled and are protected by the same rigorous health and safety laws as other mining workers. Labour hire workers in the resources sector are not vulnerable or exploited. The Queensland Office of Industrial Relations did document some examples of exploitation of labour hire workers in its issues paper on *Regulation of the Labour Hire Industry 2016* – but none of these cases took place in the resources sector.[31]

Similarly, contractors offer flexibility – and enhance productivity – by providing labour, plant and equipment, safety systems and expertise. Provision of these inputs can enable new entrants to the mining industry to secure investment finance.

The Productivity Commission has reasoned that restricting flexible working arrangements is anti-competitive and unwarranted:

> So-called 'jump-up' clauses that require businesses to engage subcontractors on the same terms as employees, or that limit the employment of casual and labour hire employees are, in spirit, contrary to the *Competition and Consumer Act 2010* (Cth). Employers should be able to use subcontractors and casual and labour hire employees, as suits their business operations and the workers themselves. The Fair Work Act should be amended to prohibit restrictions on such employment arrangements in enterprise agreements.[32]

Enterprise bargaining is working well and should be retained

Similarly, a return to pattern bargaining would unwind 25 years of bipartisan workplace relations reform. The reforms of the first Howard Government progressed the reforms that the Keating Government had commenced and by and large, the Rudd Government's Fair Work Act was consistent with the reform direction set by the Keating Government (despite some anomalies discussed below).

In the first five-year review of the Fair Work Act, the Fair Work Act Review Panel concluded that: 'In our view, the current laws are working well and the system of enterprise bargaining underpinned by the national employment standards and modern awards is delivering fairness to employers and employees.'[33] The Productivity Commission subsequently observed that enterprise bargaining 'generally works well' and that wage increases in enterprise agreements (and individual arrangements) 'have considerably outpaced awards'.[34]

None of the elements of the Australian scheme should be taken in isolation or mischaracterised. Australia's system of bargaining is underpinned by a robust safety net and multi-layered award system. It creates a set of conditions that apply across a sector and can only be modified if the

[30] Australian Bureau of Statistics, *Characteristics of Employment, Australia, Aug 2016,* ABS cat. no. 6333.0, released 2 May 2017.
[31] See Queensland Office of Industrial Relations, *Regulation of the Labour Hire Industry 2016,* issues paper, 15 December 2016.
[32] Productivity Commission, *Workplace Relations Framework: Final Report, Volume 1,* Canberra, 21 December 2015, p. 37.
[33] Professor Emeritus Ron McCallum AO, The Hon Michael Moore and Dr John Edwards, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation,* Australian Government, 18 November 2012.
[34] Productivity Commission, *Workplace Relations Framework: Final Report, Volume 1,* Canberra, 21 December 2015, p.3; *Workplace Relations Framework: Final Report, Volume 2,* Canberra, 21 December 2015, p. 661.

employee is better off overall. This is important context when considering the operation of enterprise bargaining or individual flexibility agreements for higher paid workers.

For the minerals industry, business success is more dependent than ever on the efficiency of the entire export supply chain, from exploration and initial development through to final shipment. Improvements in productivity, cost competitiveness and enterprise flexibility are necessary if Australia is to unlock the growth potential across current and future mining projects. Conversely, pattern bargaining would enforce uncompetitive rates of pay and restrictive conditions across all mines and related operations, irrespective of their lives, commodities or particular challenges.

Permitted content should be confined to direct employment matters

With high business taxes, undue delays in project approvals and high energy costs, Australia can ill-afford further restrictions in workplace relations. In 2017 the Productivity Commission estimated that implementing its reform proposals would add $850 million a year to the Australian economy.[35] The MCA broadly supports the Productivity Commission's workplace relations reform agenda and submits that an immediate priority should be confining permitted content in enterprise agreements to direct employment matters.

The Fair Work Act has expanded the scope of permitted content in enterprise agreements well beyond the relationship between an employer and employees (Box 1).

Box 1: The undue scope of permitted matters in agreements is hindering workplace efficiency

The *Fair Work Act 2009* expanded the range of permitted content in enterprise agreements from 'matters relating to' the employment relationship to 'matters pertaining to' the employment relationship – including matters pertaining to employers and trade unions.

Consequently, more content must be bargained over, more issues can form the basis of protected industrial action, and more content is then able to be included in enterprise agreements which may then be subject to dispute resolution procedures under those agreements.

In the minerals industry, it is not uncommon to see clauses in enterprise agreements that restrict the fundamental right of an employer to manage its own business, or which have little to do with the employer-employee relationship. For example, these clauses can require employers to:

- Consult with unions on changes to regular rosters or ordinary hours of work
- Restrict retrenchment to a 'last-in, first-out' policy
- Restrict or prohibit the use of contractors or labour hire workers
- Provide employee representatives with the names and commencement dates of new employees
- Provide paid leave for employees to attend to union business.

The MCA supports removing the availability of protected industrial action for matters not directly related to the employment relationship. This would improve workplace efficiency by ensuring that:

- Negotiations are not stifled by claims that constrain an employer's ability to manage the workforce and work flow
- The bargaining process has a clear employment focus and protected industrial action cannot be misused for ulterior purposes.[36]

[35] Productivity Commission, *Shifting the Dial: 5 Year Productivity Review*, Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, p. 233.
[36] Minerals Council of Australia, *Australia's workplace relations framework: The case for reform*, MCA, 8 August 2017, pp.25-28.

The MCA recommends:

- Removing the availability of protected industrial action over business decisions and confining the content of enterprise bargaining to direct employment matters by:
  - Amending the phrase 'matters pertaining to' the relationship between an employer and employees in section 172 of the *Fair Work Act 2009* to 'matters directly related to'
  - Amending section 194 of the Fair Work Act to include an express prohibition on enterprise agreement terms that unreasonably interfere with legitimate business decisions or restrict an employer's capacity to choose an employment mix suited to its business
  - Removing matters pertaining to the relationship between an employer and a trade union from the range of permitted matters in enterprise agreements under section 172 of the Fair Work Act
  - Amending section 409 of the Fair Work Act to delete the inclusion of a 'reasonable belief' that a claim in relation to an agreement is about a permitted matter.[37]

Refocus adverse action provisions to discourage unreasonable claims

The Fair Work Act prohibits a wide range of conduct known as 'adverse action'. Adverse action provisions were intended to protect freedom of association and prevent discrimination in the workplace. However, they are being used to interfere with ordinary management decision-making, including performance management and organisational restructuring. This problem has emerged owing to the breadth of actions described as adverse, the broad spectrum of protections related to industrial activity, the onus on the employer to prove that adverse action has not occurred and the uncapped nature of potential compensation.

The MCA recommends:

- Making provision for exclusions for legitimate operational and investment decisions
- Reinstating the sole or dominant purpose test to determine whether a contravention has occurred
- Discouraging unmeritorious claims by allowing cost orders to follow the result of the case
- Codifying the High Court's approach in *CFMEU v BHP Coal Pty Ltd (2014) 253 CLR 243* to confirm that just because adverse action is connected with industrial activity, it does not mean that the adverse action occurred because of the industrial activity.[38]

Rebalance union right-of-entry provisions to prevent unwarranted disruptions

The Fair Work Act relaxed existing right of entry laws by linking them to union eligibility rules rather than the previous requirement for a union to be covered by an agreement or award at a worksite. Moreover, entry clauses were made allowable matters in enterprise agreements, which meant that unions could now take protected industrial action over the clauses where employers refuse to accede to them.[39]

The relaxation of right-of-entry rules led to a substantial increase in visits. These provisions have become the vehicle whereby unions that have proven themselves otherwise unable to persuade employees about the merits of union membership can maintain unreasonable demands on employers and employees alike. Legislative amendments in 2013 (which effectively provided a union with an unfettered right to use break areas and mandated that businesses subsidise union activities) skewed the system even further in the direction of union demands.

[37] Minerals Council of Australia, *Australia's workplace relations framework: The case for reform,* MCA, 8 August 2017, pp. 25-28; cf. the Productivity Commission, *Workplace Relations Framework: Inquiry Report, Volume 2,* Canberra, 21 December 2015, pp. 683, 820.
[38] Minerals Council of Australia, op. cit., p. 28ff; cf. the Productivity Commission, op. cit., p. 622ff.
[39] Australian Mines and Metals Association, *Fair for Who? The rhetoric versus the reality of the Fair Work Act*, October 2012, p. 4.

BHP's former Worsley alumina refinery had more than 550 right-of-entry visits between 2011 and 2013.[40] Another MCA member was subject to 257 visits between January 2015 and June 2016. These excessively frequent visits interrupted work and significantly reduced productivity.

The MCA recommends:

- Rebalancing union right-of-entry provisions by anchoring right of entry provisions in the need to allow employees access to their representatives (rather than a right of unions to advance their interests)
- Addressing any continuing operational issues over frequency of entry by:
  - Removing the requirement for there to be 'an unreasonable diversion of the occupier's critical resources' in order for the Fair Work Commission (FWC) to make orders regarding the frequency of entry
  - Requiring the Fair Work Commission to take account of the cumulative impact on an employer's operations, the likely benefit to employees of further entries and the reason for the frequency of the entries in making orders regarding frequency of entry.[41]

Reform greenfields agreements to encourage investment in new projects

Capital-intensive industries such as mining make large, decades-long investment decisions, which entail complex construction projects and long lead times before cash flows are generated. A degree of certainty about the industrial environment – including employment conditions – over the life of a construction project is vital to providing investors with confidence and making Australia an attractive destination for new capital investment.

Under the current regulatory framework, a greenfields agreement can only be made prior to project commencement, with one or more relevant unions. This effectively gives trade unions a right of veto over negotiations for major projects, and can stop or significantly delay the agreement-making process and lead to higher labour costs at the outset of an agreement.

The MCA recommends that:

- The Fair Work Commission should adopt a simpler test in approving a greenfields agreement, so that the terms of that agreement are at least at the level of similar work performed at another enterprise covered by an enterprise agreement.
- There should be capacity for employers to enter into 'life of project' greenfields agreements, or at least agreements with duration of up to and including five years according to operational needs.[42]

Allowing high-income earners to enter into individual agreements

Arrangements that limit flexibility in management and work practices hinder productivity growth, employment and the ability to adapt to changing market conditions. The limited options for agreement making which are available under the Fair Work Act restrict an employer's ability to modernise work practices or to address individual employees' personal circumstances and requirements. In particular, the benefits of Individual Flexibility Arrangements (IFAs) for high income earners (presently set at $145,400) and employers have proved to be largely illusory, owing to unions' opposition to flexibility on key matters such as hours of work, rostering and overtime.

MCA member companies respect the right of a group of employees to be represented by a union in a bargaining context where the employees wish to do so. Equally, a modern workplace relations framework should accommodate a form of individual agreement, backed by a strong safety net, which

[40] Dean Dalla Valle, then President of Coal, BHP Billiton, 'Right to enter must not cut productivity', *The Australian,* 28 November 2014.
[41] Minerals Council of Australia, *Australia's workplace relations framework: The case for reform,* MCA, 8 August 2017, p. 32f; cf. the Productivity Commission, *Workplace Relations Framework: Inquiry Report, Volume 2,* Canberra, 21 December 2015, p. 910.
[42] Minerals Council of Australia, *Australia's workplace relations framework: The case for reform,* MCA, 8 August 2017, p. 34f; Productivity Commission, *Workplace Relations Framework: Inquiry Report, Volume 2,* Canberra, 21 December 2015, p. 691.

allows an employee to agree to employment arrangements directly with his or her employer. The safety net can be managed through the National Employment Standards and modern awards.

The MCA recommends that:

- There should be greater capacity for employees who are earning over a particular threshold (such as the existing high income threshold for unfair dismissals) to opt out of an enterprise agreement and enter into individual agreements.[43]

Allow expired enterprise agreements to be terminated more easily

Many enterprise agreements in the minerals industry contain historic clauses that hinder workplace productivity and innovation. Employers who have successfully applied to terminate enterprise agreements have done so largely to remove outdated, irrelevant and restrictive clauses.

However, employers cannot easily terminate an enterprise agreement. First, the Fair Work Commission cannot terminate an enterprise agreement unless:

- The Commission is satisfied that it is not contrary to the public interest to do so
- The Commission considers it is appropriate, having taken into account all of the circumstances, including:
    - The views of the employees, each employer and each union covered by the enterprise agreement
    - The circumstances of those employees, employers and unions including the likely effect.

Second, contested terminations entail an extensive and expensive legal process, requiring voluminous evidence and robust litigation to demonstrate that termination is 'appropriate'. For applications to terminate made by AGL Loy Yang, Murdoch University, Aurizon and Port Kembla, the time from application to termination was 225 days, 293 days, 372 days and 519 days (respectively).

Third, successful applications to terminate have generally required undertakings from the employer that preserve many pre-termination terms and conditions, including pay.

Further, the number of terminations in the resources sector is low. There are 327 agreements relating to resources that are currently active. However, since 1 January 2014, 503 agreements relating to resources have either exceeded their nominal expiry date or been terminated:

- 437 of these have expired but not been replaced or terminated, with 120 of these agreements having expired in 2014
- 66 have been terminated, on application by either a union or an employer.[44]

So over the last five years, only 13 per cent of expired agreements in the resources sector have been terminated, and this small share cannot be attributed wholly to employers.

The MCA recommends that:

- There should be a more practical test when considering applications to terminate agreements (for example, after the conclusion of a particular bargaining period, it should be open for an employer to terminate an out of term enterprise agreement)
- In addition or alternatively, there should be a mechanism where any agreement which has remained in substantially the same terms for a long period of time can be terminated more readily
- The right to terminate an enterprise agreement should not be available where the union can show that:
    - It has offered a genuine compromise that reasonably meets the employer's interests, or
    - The employer failed to bargain in good faith.

[43] Minerals Council of Australia, *Australia's workplace relations framework: The case for reform,* MCA, 8 August 2017, p. 36f.
[44] Information provided by the Department of Jobs and Small Business to the MCA secretariat on 1 February 2019.

6. DEVELOPING THE FUTURE MINERALS WORKFORCE

- Australia's resources sector depends on a highly skilled, highly paid workforce that covers a range of scientific fields, professional occupations and trades. The productivity of this workforce will be bolstered by the new tools of data analytics, automation, robotics and artificial intelligence. The nation's most pressing challenge is creating the education, training and workplace relations framework that maintains Australia's competitive advantage and the minerals industry's contribution to prosperity.
- To help generate the future minerals workforce, the government will need to work closely with industry to ensure that accredited training is responsive to industry needs. MCA supports the recommendation of the Resources 2030 Taskforce to develop a more coordinated national curriculum for earth sciences and resources sector qualifications at the tertiary and VET levels and welcomes the COAG Energy Council's commitment to address skills in the resources sector as a priority issue.
- There is scope to help create partnerships between high tech METS sector and mining firms.
- Labour mobility is essential to existing operations and new projects in the minerals industry. Strategies such as fly-in. fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements, together with an effective skilled migration program, help sustain mining activity in regional areas. The MCA recommends the removal of recent unnecessary restrictions on the use of temporary skilled migration.

Productivity drives prosperity through a more efficient allocation of labour and capital. Renewing productivity growth requires the application of new ideas on how work is done and the tools that can be deployed. The imperative of safety is a further driver. The design of the mining workplace is evolving to meet this reality. To embrace these workplace design challenges, and thus maintain Australia's competitive advantage in mining, new skills are required, enhancing and augmenting those of the existing workforce and providing new opportunities for a new workers. Flexible labour markets expand the range of these new opportunities.

Future minerals workforce

The minerals industry is actively engaged in understanding the future minerals workforce and the skills requirements considering the increasing role of data analytics, automation, robotics and artificial intelligence that will see Australian mining continue to be at the forefront of innovation. Central to this work is identifying priority areas for skilling and upskilling related to technological advances.

The Productivity Commission correctly identifies skills formation as a government priority because technology adoption, use and diffusion (the long-run drivers of productivity) require people with the right skills.[45] There is additional value in improving skills formation from foundational to advanced, because it gives people better job security, income and job satisfaction. The Productivity Commission rightly points out that:

> [T]he current skills system has fractures that put at risk its capacity to deal with the future labour market changes. There are deteriorating results among school students. The VET system is in a mess, and is struggling to deliver relevant competency-based qualifications sought by industry. Leading segments of the university sector are more focused on producing research than improving student outcomes through higher-quality teaching.

Specialist minerals disciplines have suffered significant declines in recent years. In mining engineering, the future domestic pipeline of graduates is going to be significantly impacted with less than 50 expected to graduate in 2020.[46] This is less than a third that graduated five years ago. While enrolments in mining engineering traditionally follow commodity prices, since 2016 they have not increased when commodity prices have. PwC suggests that the decline in enrolments is related to

[45] Productivity Commission, *Shifting the Dial: 5 Year Productivity Review*, Report No. 84, Canberra, 3 August 2017, p. 83f.
[46] Minerals Council of Australia, *MTEC Key Performance Measures Report 2018*, Canberra, October, 2018

negativity from past industry behaviours linked to the cyclical nature of the industry as a general lack of awareness about opportunities within the mining industry.[47]

Whilst the traditional occupations and associated skills will remain relevant and essential to the future minerals workforce, they will be enhanced and complimented by a suite of broader skills and capabilities. The broader skills and capabilities important to the future minerals workforce include core, technical skills coupled with cognitive or 'soft skills' and interpersonal skills, as well as technological literacy and specialist skills in complementary disciplines.[48]

These issues have been identified by the Resources 2030 Taskforce as part of attracting and supporting the skilled minerals industry workforce, including developing a more coordinated national curriculum for earth sciences and resources sector qualifications at the tertiary and VET levels.[49]

The industry supports the recommendations of the taskforce and the Productivity Commission for reform across education landscape to meet the future workforce requirements.[50]

Innovation and technology adoption

Over the past ten years, we have seen a dramatic change in the fundamental skills and capabilities, processes, roles, and organisational models that are needed to run an operational mine. Whilst business pressures to improve safety and increase productivity contribute to this change, much of this new change is driven or enabled by technology.[51] The mining industry spent $1.9 billion on research and development (R&D) in 2015-16 – the equivalent to 11 per cent of all business R&D spending in Australia.[52] Innovation and associated technology adoption will alter the current and future workforce, including the way traditional skilled trades and professionals interface with these new technologies.

In 2019, Rio Tinto will deliver their 'mine of the future' through a world-first, fully networked mine at Koodaideri. Across the operation machines will talk to each other and eventually start telling their distant operators in Perth what they might best do next.[53] Rio Tinto has stated that the mine will be the most technologically advanced mine the company has ever built and set a new benchmark for 'the adoption of automation and the use of data to enhance safety and productivity'.[54]

Skilling the future minerals workforce

The minerals industry is concerned about the marked decline in participation in science, technology, engineering and mathematics (STEM) subjects in schools over the past decade. Participation in the future minerals workforce will require the development of new capabilities and skills from primary and secondary education through to tertiary and higher education. The Australian minerals industry spends more on training per employee than most industry sectors (5.5 per cent of payroll), including more than $50 million of direct investment in higher education over the past decade.[55] The industry also supports established programs including peer-to-peer outreach programs, online resources for teachers and teacher professional development.[56] Companies also make individual investments in STEM. For example, MCA member BHP has established the BHP Billiton Foundation which is investing $55 million over five years in STEM-related activities.[57]

Pathways that span TAFE, university and include intensive micro-credentialing (mini-qualifications that demonstrate skills, knowledge, or experience in a given capability) will likely become commonplace for the industry, making it easier to both connect with and learn the key skills for our

[47] PwC. *Aussie Mine 2018, November* 2018.
[48] R Lansbury, E Downs, G Woodcroft, 'Industry Panel', discussion at the Minerals Council of Australia 2018 Minerals Industry Education Summit, Melbourne, 17 May 2018.
[49] Department of Industry, Innovation and Science, *Resources 2030 Taskforce Australian resources – providing prosperity for future generations,* Canberra, September 2018
[50] Productivity Commission, *Shifting the Dial: 5 Year Productivity Review*, Report No. 84, Canberra, 3 August 2017, p. 82.
[51] G Yeates, 'The changing nature of work in mining', address at the Minerals Council of Australia 2018 Minerals Industry Education Summit, Melbourne, 17 May 2018.
[52] Australian Bureau of Statistics, *Research and Experimental Development, Businesses, Australia, 2015-16*, ABS cat. no. 8104.0, released on 15 September 2017.
[53] M Stevens, *Rio's mine of the future is now,* Australian Financial Review, 30 November 2018, Companies and Markets, p32.
[54] C Latimer, *Rio Tinto approves $3.5b ore mine in the Pilbara,* The Sydney Morning Herald 29 November 2018, viewed 30 November 2018.
[55] NCVER, *Training and education activity in the minerals sector*, 20 March 2013.
[56] See *Oresome Resources*, viewed on 21 January 2019.
[57] BHP, BHP Billiton Foundation, March 2016, viewed February 2019.

industry.[58] The minerals industry will require a vocational education and training system for accredited and non-accredited training that is industry-led, demand-driven and responsive to cater for the emerging skills of the future. The minerals industry maintains that funding of training should be extended beyond qualifications to include skill sets and units of competence.

Industry is already leading by example. Collaboration between Rio Tinto, South Metropolitan TAFE and the Western Australian Government will deliver high-tech courses in automation for the first time in Australia. These nationally-recognised qualifications, the first to provide pathways to emerging jobs in the area of automation, are expected to be available from 2019. Rio Tinto has made an initial investment of $2 million for the development of these courses.[59] Government should consider how this work can be leveraged across the country.

The mining industry shows consistent leadership in its funding of training and education and creative initiatives to address specific problems. This is a most pressing issue for governments and the MCA welcomes the commitment of all governments through COAG. More work is needed. Governments should not, however, put blanket requirements on skills funding as part of licencing or other regulatory arrangements as this will constrain the flexibility and creativity that we need to respond.

Labour mobility and skilled migration

As part of its commitment to communities, the minerals industry gives priority to local employment and sourcing. In many cases, companies have established local training programs and provide relocation support for employees to support this priority. However, the remote location of Australian mining operations makes fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements a necessity for many operators and their employees, especially for highly specialist professional, technical and trade roles.

The Productivity Commission has pointed out that labour mobility improves the overall resilience of the economy.[60] Further, labour mobility spreads the benefits of the mining boom into other regions.[61] The Commission also found that FIFO arrangements softened the impact of the end of the investment boom in a number of regions.[62]

The Productivity Commission has argued that regulatory impediments that reduce labour mobility make it more difficult for people in regional communities to pursue employment or training opportunities. These include occupational licensing requirements, particularly where there are different arrangements across jurisdictions.[63] Removing or reducing the impact of such barriers is crucial to enabling people and businesses in regions to make better use of their existing resources.[64]

Temporary skilled migration is a small but important supplement to industry employment. The minerals industry employs approximately 0.4 per cent of its workforce through temporary skilled migration, accounting for only 1.2 per cent of temporary skilled workers. Over 90 per cent of these are professionals, managers and technical trades.[65] An effective temporary skilled migration program is a vital component of meeting the skills needs of the sector. The MCA recommends the removal of unnecessary restrictions on the use of temporary skilled migration announced in 2018.

Recommendations

- The MCA supports the range of reforms advanced by Resources 2030 Taskforce and the Productivity Commission to generate a high-quality education system that promotes skills formation and prepares students for technology adoption, use and diffusion, including:
    - Developing a more coordinated national curriculum for earth sciences and resources sector qualifications at the tertiary and VET levels

[58] Deakin University, https://www.deakinco.com/media-centre/news/Benefits-of-micro-credentials-for-business-and-employees. 24 October 2017.
[59] See Rio Tinto, http://www.riotinto.com/media/media-releases-237_25010.aspx, 8 April 2018.
[60] Productivity Commission, *Transitioning Regional Economics: Study Report*, 15 December 2017, p. 80.
[61] Productivity Commission, *Transitioning Regional Economics: Study Report*, 15 December 2017, p. 79.
[62] ibid., p. 16.
[63] Productivity Commission, *Transitioning Regional Economics: Study Report*, 15 December 2017, p. 24.
[64] ibid., p. 24.
[65] Department of Immigration and Border Protection, *Temporary resident (skilled) report*, 30 June 2018.

- Introducing a more graduated system of student assessment to signal to employers the level of proficiency in vocational education and training (VET)
- Developing an objective VET accreditation system that signals the quality of skills, regardless of how they are acquired and accepting new models of skills formation
- Improving student outcomes by providing affordable, high quality university education with qualifications that are relevant to labour market needs

- The future minerals workforce will be even more diverse, geographically distributed and digitally connected. It will require broad ranging skills and competencies using both accredited and non-accredited training. Government will need to work closely with industry to ensure that accredited training is responsive to industry needs
  - Government should not put blanket requirements on skills funding as part of licencing or other regulatory arrangements
- Strategies such as fly-in, fly-out (FIFO) and drive-in, drive-out (DIDO) arrangements, together with an effective skilled migration program, help sustain mining activity in regional areas
- Temporary skilled migration is a small but important supplement to industry employment. The scheme would be improved by:
  - Dropping the arbitrary upper age limit of 45 years at time of application for permanency to ensure that industry is able to secure knowledge experts, senior managers and leaders for key positions to aid Australia's competitive advantage in the sector
  - Removing the three years' work experience requirement for international students graduating from Australian universities, to transition from a temporary graduate visa to industry – and securing the skills industry needs now
  - Placing Mining Engineering on the Short-term Skilled Occupations List (STSOL) to address the immediate need across industry and provide a genuine pathway toward permanent residency for graduates
  - Allocating funds from the Skilling Australians Fund proportionally to each industry's use of the temporary skilled migration visas to support skilling and upskilling. End the cross-subsidisation of other industry sectors
  - Abolishing labour market testing to remove the unnecessary and ineffective administrative requirement and recognise the well-established and historically consistent industry practice of seeking skilled migration as a last-resort means of obtaining critical but hard-to-fill skills.

7. ENVIRONMENTAL STEWARDSHIP

- The Australian minerals industry is a leader in environmental stewardship. The industry is committed to high environmental standards that are managed on the basis of science and risk.
- The industry needs clear and consistent obligations for biodiversity offsets and rehabilitation, recognising mining's strong track record of stewardship.
- The duplicative federal water trigger for coal seam gas and large coal developments already assessed at a state level should be reviewed.
- There should be an increase in strategic approaches to the use of land by all users. Governments should consolidate the COAG Multiple Land Use Framework, acknowledging the benefit for all society of resource development alongside landholder interests.

Australian mining and environmental stewardship

MCA member companies are signatories to *Enduring Value – the Australian Minerals Industry Framework for Sustainable Development*. Principle 6 of Enduring Value requires members to seek continual improvement in environmental performance. This includes specific commitments to assess and address impacts, manage wastes and rehabilitate and close sites responsibly.[66]

Enduring Value is complemented by the MCA's Water Policy and the Land Stewardship Policy which articulate industry commitment to sustainable water and land use outcomes.[67]

Modern mining environmental practice is highly regulated, better implemented and more accountable than ever before. The minerals industry is committed to upholding high standards of environmental protection based on the use of sound science and robust risk-based approaches in the assessment and management of potential environmental impacts, key aspects of which are described below.

Land use and mine rehabilitation

The footprint of mining occupies less than 0.1 per cent of Australia's land mass.[68] Mining, agriculture and conservation are not mutually exclusive land uses. Agreements with local farmers, Indigenous communities and others to use or manage non-mining land owned by companies are increasingly commonplace and an important income stream.

Recognising its responsibility as a temporary custodian of land, the industry's goal is for mined land to be available for future economic activity, conservation or community use. Mining activities aim to minimise disturbance, provide for ongoing progressive rehabilitation and achieve an agreed post-mining land use that is both stable and self-sustaining. In line with evolving community expectations, the minerals industry's approach to land rehabilitation has improved significantly in recent decades. Post-mining land uses are considered at the mine design stage and defined throughout the mining lifecycle, incorporating regional environmental values and community preferences among other factors.

The industry recognises that while some previously mined areas are rehabilitated to pre-existing condition or better, they may still result in a substantial transformation of the landscape. This presents opportunities for considering new and innovative approaches to post-mining land use.

Water stewardship

Mining is a low-volume, high-value, water user accounting for 3.7 per cent of Australia's water consumption and generating between $111 million and $127 million of gross value-add per gigalitre.[69]

[66] Minerals Council of Australia, *Enduring Value,* MCA, 2015.
[67] Minerals Council of Australia, *MCA Land stewardship policy*, October 2012 and Minerals Council of Australia, *MCA Water Policy*, February 2012
[68] Department of Environment and Energy, *State of the Environment 2016, Land Use and Management,* Canberra, 2016
[69] Australian Bureau of Statistics, *Water Account, Australia, 2015-16,* ABS cat. no. 4610.0, released 23 November 2017.

The industry is committed to responsible water stewardship which incorporates leading practice, research and development and engagement with host communities.

The industry is continually innovating to reduce its fresh water take through improved reuse efficiency and the use low quality water not suitable for agriculture or the environment including hyper-saline waters and primary-treated sewage.

Companies are increasingly taking a catchment based approach to water stewardship in recognition of shared risk and opportunities for all water users. This includes establishing or participating in dialogues and partnerships with other water users to improve knowledge of local water systems, investing in water infrastructure to support sustainable water use and identifying opportunities for beneficial water use by third parties, including for agricultural production and town water supply.

The Australian minerals industry is a leader in water stewardship. The industry has developed a leading practice water accounting framework which has been adopted by globally. Key features have also been incorporated in the Global Reporting Initiative corporate reporting standards.[70]

Biodiversity and nature conservation

While not a significant driver of biodiversity loss, the industry recognises the need to address biodiversity conservation as a key component of environmental management.[71] The industry's approach centres on assessment, prevention and management of biodiversity impacts and the identification of opportunities to enhance biodiversity conservation.

The Australian minerals industry is focused on avoiding, minimising and mitigating adverse impacts on conservation values. Nature-based initiatives commonly supported by the industry include flora and fauna research, community education programs and initiatives to capture and apply traditional ecological knowledge. The minerals industry has contributed to the recovery of a number of threatened species and provides extensive data and resources to national biodiversity research.

In some circumstances, offsets may be used to compensate for residual loss of biodiversity. Offsets should be strategically developed to enhance the connectivity and resilience of conservation values within the landscape.

Initiatives to improve environmental outcomes

The MCA is driving new thinking in environmental stewardship. The MCA has mapped the industry's approach to sustainable development to the United Nation's Sustainable Development Goals (SDGs). This will assist mining to better target its environmental and social investments to achieve of the SDGs.

Governments have a significant role in reducing regulatory burden, greater community confidence and improved environmental outcomes. The MCA recommends the following:

- Reform to current environmental assessment and approvals processes should be completed as a matter of urgency (these are discussed further in Section 7).
- Increased use of strategic land use approaches. The COAG Standing Council on Energy and Resources' 2013 Multiple Land Use Framework should be used to guide policymakers to balance landholder interests with societal benefits from resource developments.
- Governments should partner with industry to communicate the benefits of mining and build greater community confidence in environmental assessment and approval processes.

[70] Global Reporting Initiative, *GRI 303 Water and Effluents 2018*, GRI, effective 1 January 2021
[71] Department of Environment and Energy, *State of the Environment 2016, Energy and Resource Extraction and Processing*, Canberra 2016.

8. STREAMLINED ENVIRONMENTAL APPROVALS

- Australia's complex and duplicative processes for approving major projects are generating unnecessary delays and uncertainty and are an increasing barrier to attracting the international capital required for industry growth. The Productivity Commission found in 2013 that overlap and duplication between federal and state processes can be greatly reduced without lowering the quality of environmental outcomes.
- A scheduled review of the Environment Protection and Biodiversity Conservation Act is due this year providing a new opportunity to streamline approvals processes. That review should maintain the Act 's objective to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.
- The Australian Government should work closely through COAG to end the duplication and overlap between respective state and federal processes and introduce risk-based assessment approaches. The government should also install safeguards to prevent frivolous and vexatious legal challenges to approved projects.

The minerals industry supports regulation that is both efficient in its operation and effective in achieving the desired outcomes. The industry does not seek to diminish environmental safeguards or standards. Rather, the industry seeks to create a more efficient process in meeting regulatory objectives through removal of unnecessary processes or prescription.

Inefficient project approval processes discourage mining investment

Australia's complex and duplicative processes for approving major projects are generating unnecessary delays and uncertainty. A one year delay can reduce the net present value of a major mining project by up to 13 per cent and cost up to $1 million every day.[72] For a capital-intensive and highly competitive industry like mining, costly delays to major projects are a significant barrier to attracting international capital and investing in additional productive capacity.

The Productivity Commission concluded in 2013 that overlap and duplication between federal and state processes can be greatly reduced without lowering the quality of environmental outcomes.[73] The commission recommended that state processes should be fully accredited under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to create a single assessment and approval process where federal standards are met.[74]

In 2017, the Productivity Commission estimated that implementing its 2013 recommendations to improve and streamline major project approvals would generate a 10 per cent reduction in delay costs for announced projects and save approximately $240 million.[75] Unfortunately, progress towards more efficient approvals processes has been partial and slow. The Gillard Government initially committed to streamlining state and federal project approvals, but soon reversed its position. Under the Abbott Government, states agreed to implement assessment and approval bilateral agreements with the Commonwealth. While assessment bilateral agreements were improved, legislative amendments to enable approval bilateral agreements failed to pass the Australian Senate.

The Senate Select Committee on Red Tape found in October 2017 that: 'delays in environmental assessment and approval processes are having adverse economic outcomes' and recommended that 'the Australian, state and territory governments recommit to the one-stop shop initiative'.[76] The

[72] MCA member calculations, based on a project value of between $3 billion and $4 billion.
[73] Productivity Commission, *Major Project Development Assessment Processes: Research Report,* Canberra, released on 10 December 2013, pp. 2 and 13.
[74] See Allan Hawke, *The Australian Environment Act: Final report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999,* October 2009, p. 66f; and the Productivity Commission, op. cit., p.15.
[75] Productivity Commission, *Shifting the dial: 5 year productivity review: Table B.3*, Canberra, 3 August 2017, released on 24 October 2017, p. 237; *Major Project Development Assessment Processes: Research Report,* Canberra, released on 10 December 2013, pp. 31–38.
[76] Select Committee on Red Tape, *Effect of red tape on environmental assessment and approvals*, interim report, October 2017, pp. vii and 27.

Australian Parliament should approve the necessary changes to allow streamlined environmental approvals.

Post-approval safeguards

Judicial review processes are important to safeguard the rights and interests of affected individuals and to ensure development assessment and approval processes remain robust. The mining industry supports the rule of law and the right of affected individuals to have their say. However, industry opponents – who are often not from the local community – are deliberately misusing the appeals process to halt or delay projects.

Appeals through the Federal Court do not need to be successful in order to delay a project, and in fact most cases are not successful. The Productivity Commission found that the time between approval and legal judgement for coal projects ranged from seven months to more than 24 months.[77] Such challenges provide little environmental benefit, yet cost the project proponent time and money.

The feasibility of a process whereby only challenges which have merit proceed to legal judgement would also reduce unnecessary delays and should be investigated.

Addressing wholly duplicative 'triggers' for federal approval

The water trigger for coal seam gas and large coal development should be removed, given that it duplicates existing state processes and relies upon the same expert advice. A recent review found the regulatory costs of the trigger borne by business was estimated at $46.8 million annually.[78]

The nuclear trigger should also be reformed to remove uranium mining, milling and decommissioning and rehabilitation. There is no scientific case that would justify default treatment of uranium mining related activities as a matter of national environmental significance. Where significant environmental risks are presented, these are addressed through comprehensive state and territory assessment and approval processes.

Other reforms

A range of other reforms to the operation of the EPBC Act will improve the efficiency of environmental assessment and approvals processes, including:

- Setting information requirements to manage clearly defined risks, rather than to insure against every conceivable risk
    - An Environmental Impact Statement (assessment documentation provided by the proponent) for a brownfields development comprised 8,500 pages and weighed 43 kilograms.
    - An Environmental Impact Statement for a medium sized, low-risk mining project in the Northern Territory comprised more than 3,080 pages and weighed 13.8 kilograms. A supplementary statement with further information was provided comprising an additional 900 pages.
    - One MCA member was required to generate a 1 in 100,000 year flood model for a water catchment – this delayed their project approval by four years.
- Increased use of alternative assessment mechanisms, including particular manner provisions and approval on referral information
- Coordinating environmental offset requirements between federal and state governments, so that they reinforce rather than duplicate each other.

Regulatory reform should also be a COAG priority. Accordingly, the MCA recommends the Australian Government work closely with state governments to:

- Encourage improved coordination within state and territory level approval processes

[77] Productivity Commission, *Major Project Development Assessment Processes: final research report*, Canberra, released on 10 November 2013, p. 258.
[78] Hunter. S, *Independent review of the water trigger legislation*, prepared for the Australian Government, tabled in Parliament on19 June 2017, p. 9.

- Encourage all levels of government to adhere to COAG best practice principles of regulation
- Maintain the primacy of ministers in approval decisions and avoid outsourcing of decisions to third party panels with a narrow mandate.

9. SOCIAL PERFORMANCE

- The Australian minerals industry is a partner with host communities helping to support economic development and is adopting new approaches that ensure social investment supports local values and long term community resilience. The contribution extends beyond the mine, as skills and experience are transferrable to other parts of the community
- All governments have an important role to play in building community confidence in regulation and maximising the shared benefits of mining. Industry supports the Council of Australian Governments' agenda to raise community awareness of the benefits of mining and effective regulation
- The Australian Government should use existing research to create a modern regional development and sustainability framework to help leverage the economic stimulus and social investment of minerals development and target investment into opportunities for economic resilience and diversification
- Industry supports a more equitable re-investment of royalties and taxes paid by the mining industry into the revenue-producing regions
- The MCA recognises the Australian Government's global leadership in shaping the 2030 Agenda for Sustainable Development.

Supporting a prosperous and resilient regional Australia

The minerals industry is an active partner of communities across regional Australia. Working in partnership with host communities and regions, the industry supports shared and sustainable benefits from minerals development. In addition to direct employment opportunities, the industry engages local suppliers, ranging from small businesses to national and export-focused firms. This supports both the sharing of economic benefits from minerals development while enabling suppliers to leverage contracts with a mining company into new growth opportunities.

Innovative social investment

The minerals industry recognises maintaining its social licence to operate depends on the sector continuing to adapt to ensure its social performance meets or exceeds evolving expectations of host communities and broader society.

Industry approaches to social investment are increasingly focused on partnering with local governments, community organisations and development organisations to support delivery of community-led initiatives. This approach ensures that industry support local values, community resilience and regional economic development priorities.

The MCA is working to enhance, better quantify and communicate community socio-economic outcomes from mining activity and voluntary social investment. This work will be informed by CSIRO's community attitudes towards mining survey.[79]

All Australian governments have an important role to play in supporting community confidence in regulation and maximising the shared benefits of mining.

The MCA has prioritised several key initiatives that align with Resources 2030 Taskforce recommendations and work by the Department of Industry, Innovation and Science.

Community resources to build confidence in mining regulation and governance

Effective and responsive community consultation across the life of a project underpins trusted relationships between stakeholders, including communities and mining companies. Governments can support effective engagement by raising awareness of mining project approvals processes, including how community feedback is addressed and regulatory safeguards.

[79] CSIRO, *Australian Attitudes Towards Mining Survey – 2017 Results*, Pullenvale, 5 May 2018

The Australian Government should consider developing of a suite of high-quality, community-centric guidance material that identifies and explains common features of state and territory and federal mining approvals and regulatory processes.

The aim of the project is not to assume the role of state and territory governments or duplicate effort, but to provide this information in a central, easy to understand and interactive format. This should include:

- Mapping the common features of mining approvals and regulatory processes across jurisdictions, noting specific legislation relevant to certain regions
- Highlighting opportunities within approvals processes for community input and feedback
- Examples of how environmental assessment processes are undertaken, demonstrating the depth of research and relevant timeframes.

This project can build on the CSIRO work into communities' opinions of approvals and governance.

Supporting sustainable regional development

Significant work has been undertaken by successive governments, the minerals industry, research institutions and other groups to understand how to support sustainable and inclusive economic growth in mining regions.

The MCA recommends the Australian Government should use existing research to develop a series of guiding principles as part of a modern regional development and sustainability framework. This framework would assist governments to better leverage the economic stimulus and social investment of minerals development and target investment, including the equitable investment of mining taxes and royalties into opportunities that support economic resilience and diversification.

This program could be modelled on COAG's 2013 Multiple Land Use Framework.

Modern slavery supplier reporting requirement

The MCA welcomed passage of the Modern Slavery Bill 2018 and the requirement for larger companies to report on operational and supply chain modern slavery risks.[80] These requirements should be implemented in an efficient manner, recognising similar requirements under the UK Modern Slavery Act and the complexity of global supply chains.

United Nations Sustainable Development Goals (SDGs)

The MCA recognises the Australian Government's global leadership in shaping the 2030 Agenda for Sustainable Development and ongoing focus and investment on supporting SDG achievement domestically and internationally.

The Australian minerals industry is an important contributor to the achievement of the SDGs. Recognising alignment between the SDGs and *Enduring Value, the Australian minerals industry's framework for sustainable development*, the MCA partnered with Cardno International Development in 2018 to prepare an in-depth report considering how the minerals industry was supporting SDG achievement.[81] The report *Sustainability in Action: Australian mining and the United Nations Sustainable Development Goals* was endorsed by the Global Compact Network Australia.[82] The report confirmed the minerals industry has responded to the SDGs by identifying areas of alignment and tailoring programs to achieve long-term social, environmental and economic outcomes.

The MCA supports ongoing investment by the Australian Government in initiatives that build awareness and capability to enable all sectors to contribute to SDG achievement, including the SDG Hub and reporting platform.

[80] Companies with a minimum annual consolidated revenue of $100 million
[81] Minerals Council of Australia, *Enduring Value Framework,* MCA, viewed 7 December 2018 and Sustainability in Action:
[82] Cardno International Development, *Sustainability in Action: Australian mining and the United Nations Sustainable Development Goals,* prepared for the Minerals Council of Australia, October 2018.

10. INDIGENOUS PARTNERSHIPS

- Australian minerals and Indigenous communities have a successful history of sharing the benefits of mining. The successful framework of the Native Title Act should be maintained while allowing operational reforms to improve outcomes for traditional owners and industry
- The Australian Government should continue to fund initiatives that support effective operation of Native Title organisations, including representative bodies and service providers, and support Indigenous-led economic development programs.
- Government should develop a new economic vehicle to enhance native title benefits for Traditional Owners from mining and other economic activities, including targeted reforms to enable Prescribed Bodies Corporate to manage native title monies in a way that maximises intergenerational benefit.

The Australian minerals industry recognises and respects the rights and interests of Indigenous peoples and has a long-history of working with Traditional Owners and Indigenous communities to achieve and sustain shared benefits. The last two decades has seen the establishment of more than 1,900 land use agreements between Indigenous peoples and the mining industry (99 per cent with no legal contest of rights) delivering economic and social benefits, supporting protection of cultural and environmental heritage.[83]

Mining companies invest substantially in training and education to foster and increase employment of Indigenous peoples, particularly in regional and remote communities. As a result, the minerals sector now employs around 6,600 Indigenous Australians – 2.5 times more than in 2006 and significantly greater than the 1.5 times growth in non-Indigenous employment.[84] The minerals industry's long-standing focus on Indigenous business engagement was key to the growth of the Indigenous business sector. This is reflected in the significant growth of Indigenous business diversity and incomes during the mining investment phase.[85]

The MCA supports the Resources 2030 Taskforce recommendation that industry, governments and other stakeholders work more closely with communities to drive better outcomes for Aboriginal and Torres Strait Islander peoples.[86] Achieving this requires targeted reform and continued investment in programs and policies that support Indigenous communities to achieve their aspirations and priorities.

Reform of the *Native Title Act 1993*

Much of the land on which minerals industry operates is covered by native title or state and territory Aboriginal land rights legislation.[87] Accordingly, certainty, stability and efficiency of the *Native Title Act 1993* (NTA) are critical to the sector and other parties.

The MCA broadly supports the majority of proposed amendments in the Exposure Drafts Native Title Legislation Amendment Bill 2018 and Registered Native Title Bodies Corporate Legislation Amendment Regulations 2018.[88] These include reforms to clarify the duties of the applicant and determination of decision-making processes and ensure the validation of section 31 agreements potentially affected by the McGlade decision, mirroring the Native Title Amendment (ILUA) Bill 2017.

While supporting creation of a public record of section 31 and ancillary agreements, the MCA does not support the Registrar (or relevant body) holding a copy of the agreement. This is both unnecessary and inappropriate where parties to the agreement have elected for the agreement to be confidential. The reform proposal to allow historical extinguishment of native title to be disregarded under certain circumstances may have significant unintended impacts and its implications should be fully assessed.

[83] Marcia Langton, '*No one has done more for indigenous Australians than the mining industry*', *The Australian,* 26 July, 2017
[84] Department of Prime Minister and Cabinet, *Closing the Gap Report,* Australian Government, Canberra, 2018, p.78.
[85] Department of Prime Minister and Cabinet, *Indigenous Business Sector Strategy*, Canberra, 2018, p. 22.
[86] Resources 2030 Taskforce, *Resources 2030 Taskforce,* Commonwealth of Australia 2018, Canberra, 2018, p.12.
[87] Minerals Council of Australia, *MCA Indigenous Communique – Indigenous Economic Development,* MCA, Canberra, 16 February 2016, p. 1.
[88] Attorney-General's Department, *Exposure Draft Native Title Reforms,* viewed 5 January 2019.

Complementary reforms to restore the 'status quo'

Stability in the operation of the NTA requires ongoing Australian and state government cooperation. The MCA supports the Mining Amendment (Procedures and Validation) Bill 2018 Western Australia which seeks to address the implications of the 2017 Forrest & Forrest decision by the High Court that a mineralisation report must be lodged at the time of a mining lease application to be valid. While procedural in nature, this decision has created significant uncertainty and puts at risks the shared benefits of all stakeholders associated with mining activities.

A complementary amendment is also required to the NTA to give effect to the Western Australia bill. These amendments would restore the 'status quo' for all parties as understood before the 2017 decision. The MCA supports incorporation of the NTA amendment into the current native title reforms package.

Continued funding for the Indigenous Advancement Strategy

As a long-term partner in Indigenous economic development, the minerals industry supports continued Australian Government for initiatives which support Indigenous communities to achieve long-term sustainable development.[89] Key initiatives include:

- Continuation the Prescribed Bodies Corporate (PBC) capacity building program to assist PBCs to embed good governance and develop economic opportunities
- Development of resources for Indigenous organisations, such as the PBC website managed by the Australian Institute for Aboriginal and Torres Strait Islander Studies
- Establishment of the Indigenous Business and Economic Advisory Council to provide advice on the Australian Government's procurement policy, leveraging industry experience
- Continuation of the Indigenous girls' science, technology, engineering and maths (STEM) academy.

The MCA also supports programs that properly fund representative bodies and other native title organisations to undertake their statutory requirements.

A new model for managing land-related payments

A range of financial vehicles are available for the management of payments arising from Native Title. While some work effectively, the Government has acknowledged that others have shortcomings making them costly, complex and opaque.[90] For example, charitable trusts are commonly used but place limits on the use of funds to support stand-alone businesses and embed the notion that native title monies are charitable funds.

The MCA has long support advocacy by the National Native Title Council (NNTC) and other parties to address structural and legal impediments that inhibit or discourage Indigenous organisations from realising greater economic development and intergenerational benefits from native title monies. In 2018, the NNTC, supported by the MCA, updated the previous Indigenous Community Development Corporation model to reflect recent current law and practice.

The revised model would involve establishment of an optional 'economic vehicle status' (EVS) designation available to PBCs. This would enable the PBC EVS to undertake a broader range of economic development activities, such as providing finance for private businesses, while accessing tax concessions that apply where an organisation is seeking to address disadvantage. Importantly the model would also enable legacy funds to be rolled into the PBC EVS. The model would also include additional transparency and reporting requirements.

These reforms would be achieved through targeted amendments to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, its regulations and associated legislation.

[89] Department of the Prime Minister and Cabinet, *Indigenous Advancement Strategy*, viewed 8 January 2019
[90] Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, Canberra, 2015.

11. EXPLORATION

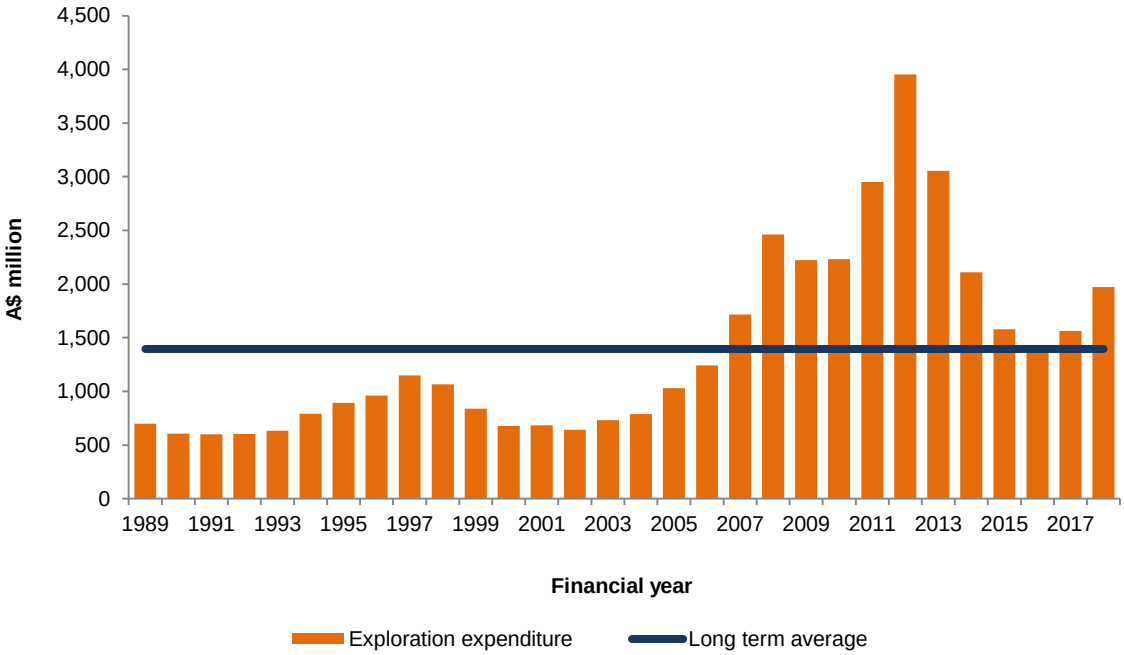
- Exploration is fundamental to the future success of the Australian mining industry, but it is a risky undertaking. For mining companies exploration is analogous to research and development expenditure.
- To support additional exploration activity the government should increase funding for pre-competitive geological survey work which is an important public good. This should include funding to expand programs that deliver key aspects of the UNCOVER roadmap such as Geoscience Australia's Exploring for the Future program and industry research partnerships such as the Minex CRC.
- The government should retain immediate deductibility for exploration expenditure and the Junior Minerals Exploration Incentive.

The importance of exploration

Exploration activity is fundamental to the future success of the Australian mining industry. Exploration is the process by which geological information is collected and analysed to identify mineral deposits as well as determining the economic feasibility of their extraction. For mining companies exploration is analogous to research and development expenditure; it is searching for business opportunities to develop in the future and has no guarantee of success. Exploration expenditure is required not only to discover and initially measure ore bodies, but also to sustain mining activity once it has commenced – particularly for ore bodies that tend to be depleted quickly such as gold.

In 2017-18, exploration expenditure in Australia totalled $1.9 billion. This a 26 per cent increase from 2016-17; however, as shown in chart 10, expenditure remains far below the peak levels recorded during the high-price phase of the mining boom. While exploration expenditure remains at a level that is consistent with its long-term historical average level, this is mainly owing to exploration at existing mines rather than exploration to identify resources at new sites.

Chart 10: Declining total mineral exploration expenditure in Australia



Source: Australian Bureau of Statistics, *Mineral and Petroleum Exploration, Australia, Sep 2018*, ABS cat. no. 8412.0, released 3 December 2018.

S&P Global estimates that world non-ferrous mineral exploration expenditure totalled US$8.4 billion in 2017, 15 per cent higher than 2016.[91] Australia's share of this exploration expenditure was 13.6 per cent in 2017, placing it second behind Canada. Despite the recent upswings in exploration expenditure in Australia, our share of world exploration expenditure has been declining over the past 20 years.[92]

Government programs required to improve exploration activity

To increase exploration activity in Australia a broad series of policy reforms is required. After all, private sector investment in exploration will not occur if the prospects of developing an operational mine are poor because of excessive regulation, inflexible workplace relations practices and high tax rates. The reforms proposed in other sections of this submission must be implemented as a starting point before additional actions that target increasing exploration activity and success rates.

The government should continue to implement the UNCOVER roadmap through an extensive program of survey work that gathers new pre-competitive data on areas of Australia that remain largely un-explored or under-explored. Such data is vital for narrowing down the search areas for more advanced exploration activities that are costly and better suited to smaller target areas.

Government investment in precompetitive data is an important public good that builds a better understanding of a Australia's geology for all potential exploration investors and signals that a government is committed to fostering greater mining investment.

Government programs such as Geoscience's Australia Exploring for the Future program should be expanded with increased funding to accelerate the survey work underway and extend the program to additional greenfield areas. The program should be extended into areas backed by state government policies that are most likely to support future mining investment. This includes stable and competitive royalty systems and efficient regulatory assessment processes.

The government should continue to support research collaborations with the mining industry such as the Minex CRC which is developing new drilling methods and data collection methods to improve exploration results.

Exploration taxation incentives are useful for stimulating greater investment in exploration. Maintaining immediate deductibility for eligible exploration expenditure is vital to sourcing exploration expenditure in Australia. Immediate deductibility for exploration expenditure is a long-standing and critical feature of the income tax system to encourage mineral exploration. It recognises exploration's inherently risky nature and low success rate and simplifies the capital allowances regime. Most mining competitor jurisdictions offer similar tax arrangements for exploration and it is important for Australia to continue this allowance to remain competitive as an investment destination.

The Australian government's commitment to retaining an exploration incentive for junior explorers undertaking greenfield exploration through the Junior Minerals Exploration Incentive (JMEI) will help ensure that junior explorers without taxable income can claim exploration deductions and also stimulate greater exploration investment.

[91] S&P Global Market Intelligence, *World Exploration Trends March 2018*.
[92] AMIRA International, *Unlocking Australia's Hidden Potential*, 2017 p. 50.

12. AFFORDABLE AND RELIABLE ENERGY WITH LOWER EMISSIONS

- Reliable and affordable energy is central to Australia's economy and prosperity. However, over the past decade, Australia has moved from having some of the lowest to some of the highest energy costs in the developed world.
- The key principle underpinning energy policy should be technology neutrality. This means avoiding providing subsidies, quotas or other non-market-oriented interventions to favour specific technologies. A technology neutral approach should be applied to all low emissions energy sources - including renewables, gas, nuclear, advanced coal technologies (such as HELE) and carbon capture and storage (CCS).
- The MCA supports the government's Underwriting New Generation Investment program. The policy should select projects which clearly meet the needs of Australian industry, irrespective of technology and fuel type.
- The minerals industry acknowledges that sustained global action is required to reduce the risks of human-induced climate change. The Australian minerals sector supports a measured transition to a low emissions global economy which includes Australia's participation in global agreements such as the Paris Agreement with greenhouse gas emission reduction commitments from major emitting nations.

Energy policy should deliver the investment required to meet the needs of Australian industry

While energy policy has been the subject of major policy and political debate over the past decade, there is at last recognition the real issue confronting investors is unmanageable policy risk. Government policy should be focused on addressing this issue in a way that can provide long-term confidence to private sector investors. Policies such as the government's Underwriting New Generation Investment program, building on the ACCC's Recommendation 4 are clearly part of the solution.

Energy policy needs to, in the first instance, ensure there is enough capacity and output available to replace that of Liddell power station. It needs to focus on the cheapest options capable of delivering this in a genuinely technology manner – where no single technology is favoured over others.

A key part of this will be to ensure lower emissions from the power sector. However, given developments in technology, any option will have a lower emission intensity compared to what it replaces.

Impact of higher energy costs on Australia's economic future

Reliable and affordable energy is central to Australia's economy and prosperity. That is why the MCA supports efforts to ensure adequate supplies of low cost reliable power which meets the needs of Australian industry. Australia has lost its international comparative advantage of low cost energy. Over the past decade, Australia has moved from having some of the lowest to some of the highest energy costs in the developed world.

The National Electricity Market (NEM) in Australia is facing serious challenges including the erosion of baseload generation capacity which is already adversely impacting Australia's industrial sector and households. Australian manufacturing, minerals processing and other energy intensive activities are increasingly finding themselves priced out of international markets.

Any policy approach should aim to reduce energy costs in Australia and retain a focus on securing reliable lowest cost dispatchable energy supply that is available 24/7, while meeting Australia's challenging Paris Climate Change Commitment of 26-28 per cent reduction in greenhouse emissions. In the absence of investment in 24/7 dispatchable electricity supply to replace retiring plant, Australia will become more reliant on intermittent energy sources which may impact the security and reliability of the NEM.

Australia's looming baseload crisis

The closure of the Hazelwood power station in 2017 offered a salutary reminder of what happens when large baseload plants close. Supplying around 25 per cent of Victoria's power, its closure led to an 80 per cent increase in wholesale prices.

The MCA has consistently highlighted the challenge confronting the NEM – the expected retirement by 2030 of around 33 per cent of low cost baseload plant. In particular, the MCA has highlighted the impact recent retirements of baseload plant has had on Australian energy prices and system reliability. With Liddell power station closing in 2022, the MCA has identified four additional power stations which could also close: Yallourn in Victoria, Vales Point in NSW, Gladstone C in Queensland and Torrens B in SA. This is because increasing levels of intermittent power generation sources are making it more expensive for the older baseload plants to operate.

The importance of baseload power generation cannot be overstated, especially in the context of providing the full range of ancillary services crucial for grid reliability and security. That is, the type of electricity which can only come from large generators, usually 30MVA or larger in size. In the Australian context that means coal, gas and hydro. Internationally, it also includes nuclear power and this should be re-examined for domestic purposes.

Policies must deliver investment in affordable power available 24/7

When the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry – Final Report proposed Recommendation 4 , the MCA noted this was a 'a welcome reality check' to 'address policy risks stopping investment in least cost power supplies which are available 24/7.' Likewise, the MCA welcomed the intent of the government's Underwriting New Generation Investments. It builds on the ACCC's Recommendation 4 by seeking to secure private sector investment in new low cost power generation. The focus for the Underwriting New Generation Investment program must be to replace the capacity and output that is about to be lost with the close of Liddell power station.

The South Australian Royal Commission into the Nuclear Fuel Cycle delivered resounding support for the removal of the prohibition of nuclear energy in Australia from the *Environment Protection Biodiversity Conservation Act.* This would deliver another globally-tested option for Australian energy users.

Technology neutrality and competitive markets should underpin energy policy

The key principle underpinning energy policy should be technology neutrality. This means avoiding providing subsidies, quotas or other non-market-oriented interventions to favour specific technologies. A genuinely technology neutral approach should be applied to all low emissions energy sources - including renewables, gas, nuclear, advanced coal technologies (such as HELE) and CCS. Again, removing the nuclear ban in the *EPBC Act* would be a costless way to allow zero emission dispatchable power sources available 24/7 into Australia's energy mix.

A competitive energy market is the best way to deliver affordable, reliable and lower emissions energy. However, policy interventions by successive federal and state governments have distorted market signals and led to increased prices and reduced reliability.

Government policy should be directed at addressing what is clearly an unmanageable investment risk that is undermining the supply of low cost and reliable power. In this context, the MCA has supported the Underwriting New Generation Investment program. The policy should select projects which clearly meet the needs of Australian industry, irrespective of technology and fuel type.

As this policy involves the creation of government contracts, these need to be honoured by any future government. Without this, private sector investors will be wary of investing in any projects which may be proposed.

A simple, pragmatic energy and climate policy can reduce power prices, emissions and improve reliability

Climate and energy policy needs to be nationally coordinated and recognise the energy and resource intensive nature of the Australian economy. All sectors of the economy have a role to play in meeting the challenge of Australia's emissions reductions targets.

Recommendations

- Ensuring that new investment in energy generation can meet the needs of Australian industry for reliable, internationally competitive and affordable energy supplies.
- Continuation of the Emissions Reduction Fund and Safeguards Mechanism. The ERF has delivered significant abatement at less than $12/tonne.
- Access to international offsets allows a least cost approach to abatement, lowers the cost of meeting Australia's Paris commitments and delivers associated environmental benefits such as reducing deforestation.

13. RECOMMITTING TO A COMPREHENSIVE DEREGULATION AGENDA

- Regulatory settings have a profound impact on the Australian mining industry's cost competitiveness, productivity and capacity to adapt to changing market conditions. The industry supports the principle of 'minimum effective regulation', whereby regulation can both meet its policy objectives and do so at least cost.
- The government should refocus on deregulation, not just 'better' or 'best practice' regulation. New regulations should only be introduced if they are necessary, efficient and proportionate, and the existing stock of regulation should be minimised.
- The Productivity Commission has estimated that removing restrictions on coastal shipping would boost the Australian economy by between $19 million and $36 million a year. While the MCA broadly supports the remedial measures contained in the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017, the government should also:
  - Introduce a single permit system allowing unrestricted trade for both domestic and foreign vessels
  - Ensure that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

Achieving minimum effective regulation

Regulatory settings have a profound impact on the mining industry's cost competitiveness, productivity and capacity to adapt to changing market conditions. Regulatory requirements cover all stages of industry activity, from grant of tenure, exploration, extraction, processing, transport and mine closure through to relinquishment of tenure. Minimising the regulatory burden on industry is not the same as minimising regulation itself. The Australia's mining industry recognises its obligation to act in a way that assists government in maintaining efficient, stable and risk-based regulatory frameworks.

The essential challenge is to ensure regulation not only is directed at legitimate objectives, but that it takes an appropriate form. The Australian mining industry supports the principle of 'minimum effective regulation', whereby regulation can both meet its policy objectives and do so at least cost.

In its study report on transitioning regional economies, the Productivity Commission argued persuasively that:

> Removing unnecessary regulatory barriers is a 'win-win' policy option – these reforms are justifiable in their own right and also open up opportunities for people in regional communities to adapt to change. They should be pursued by all governments as a matter of priority. Failure to do so will unnecessarily increase the pressures faced by regional communities and constrain their prospects …[93]

The Abbott Government implemented an annual red tape reduction target and biannual repeal days. The Turnbull Government replaced these measures with the National Business Simplification Initiative, which aimed to improve existing regulation and business transactions with government. A recommitment to a comprehensive deregulation agenda would help to bring about a change in the culture of regulation: To move from periodic reviews and incremental reforms to a permanent program of reduction and improvement.

The MCA recommends that the government recommit to a comprehensive deregulation agenda that:

- Considers non-regulation options for achieving policy objectives
- Ensures any new regulations are efficient, in that they:
  - Proceed from an established case for regulatory action

[93] Productivity Commission, *Transitioning Regional Economics: Study Report*, 15 December 2017, p. 23.

- Embrace the best (or least worst) of available options
- Include clear objectives that do not overlap
- Manage risks proportionately rather than prescriptively

- Minimises the existing stock of regulation.

Liberalising coastal shipping

Internationally competitive coastal shipping services matter to businesses, consumers and communities in all Australian states and territories. Coastal ships transport refined petroleum products from Fremantle to Adelaide, newsprint from Burnie to Melbourne and gases from Hastings to Sydney.[94]

However, the current regulatory regime for coastal shipping is burdensome, anti-competitive and failing to achieve its own objective of revitalising the local shipping industry. The Productivity Commission has estimated that removing restrictions on coastal shipping would boost the Australian economy by between $19 million and $36 million a year.[95]

A number of respected and independent bodies have urged the federal government to liberalise Australia's coastal trade. In its final report on the regulation of agriculture, the Productivity Commission recommended that:

> As a matter of priority, the Australian Government should amend coastal shipping laws to substantially reduce barriers to entry for foreign vessels, to improve competition in coastal shipping services.[96]

Similarly, the Australian Competition and Consumer Commission stated that liberalising the coastal shipping trade would benefit businesses and consumers:

> Restrictions on competition in coastal shipping are potentially at odds with principles of National Competition Policy … Increased competition in coastal shipping should result in lower freight costs, with flow-on effects of lower prices for manufacturing inputs and consumer goods … A more efficient coastal shipping industry will help to relieve pressure on Australia's road and rail networks, lowering transport costs and consequently prices, across the economy.[97]

The Competition Policy Review Panel reasoned that cabotage licensing is justified only if it can be shown that the costs of restricting competition are more than offset by benefits to the nation:

> The Panel considers that reform of coastal shipping and aviation cabotage regulation should be a priority. Consistent with the approach the Panel recommends for other regulatory reviews, the Panel considers that restrictions on cabotage for shipping and aviation should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs and the objectives of the policy can only be achieved by restricting competition.[98]

The Commission of Audit judged cabotage licensing to be 'effectively industry assistance' and advised that: 'To ensure a more efficient coastal shipping industry, the Commission recommends cabotage be abolished.'[99]

While the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 proposes a number of improvements to the operation and administration of the Coastal Trading Act, they do not go far enough (Box 2 overleaf).

[94] Bureau of Infrastructure, Transport and Regional Economics, *Australian sea freight 2014-15,* April 2017, released on 5 May 2017, p. 30.
[95] Productivity Commission, *Shifting the Dial: 5 Year Productivity Review,* Report No. 84, Canberra, 3 August 2017, released on 24 October 2017, p. 233.
[96] Productivity Commission, *Regulation of Australian Agriculture: Final Report,* 15 November 2016, released on 28 March 2017, p. 42.
[97] Australian Competition and Consumer Commission, *Submission to the Government's Options Paper: Approaches to regulating coastal shipping in Australia,* May 2014, p. 1.
[98] Competition Policy Review Panel, *Final Report,* 31 March 2015, p. 210.
[99] Commission of Audit, *Towards Responsible Government, Phase 2 Report,* March 2014, p. 29.

Box 2: The Coastal Trading Act tries to protect some jobs at the expense of many others

The Australian mining industry is the largest user of coastal shipping. Bulk commodities account for 80 per cent of Australia's coastal shipping trade by tonnage, with bauxite and other aluminium ores and concentrates comprising 34.2 per cent, and iron ore and concentrates 7.5 per cent.[100] Tens of thousands of jobs rely on the efficient transportation of freight by sea – including minerals extraction and processing, petroleum, cement, steel and agriculture. Rio Tinto alone employs 6,000 workers in bauxite mines, alumina refineries and aluminium smelters across Australia.[101]

The participation of foreign ships is a longstanding feature of Australia's coastal shipping trade and is essential to the efficient and timely movement of freight. However, the *Coastal Trading (Revitalising Australian Shipping) Act 2012* made retrograde changes to competition rules that have increased domestic transport and administration costs and made it more difficult to source coastal shipping services when they are needed. In particular:

- For some dry bulk commodity producers, the cost of shipping final product around Australia is now about the same as shipping from overseas to Australia
- Bell Bay Aluminium reported a 63 per cent increase in shipping freight rates from Tasmania to Queensland in just the first year of the 2012 regime[102]
- Another company saw freight charges increase by over $3,000 a day up and down the east coast of Australia.

Under the Coastal Trading Act, Australian-flagged ships enjoy unrestricted access to coastal trade under a five-year general license, while foreign-flagged vessels only have access to a 12-month temporary license or, in exceptional circumstances, a 30-day emergency license. In addition, the Act gives Australian ships the power to contest voyages proposed by foreign ships.[103]

Since the Coastal Trading Act was introduced, the carrying capacity of the Australian coastal fleet has decreased by 63 per cent. In addition, Australia's coastal fleet is older and more costly to operate by international standards, attracting higher insurance premiums.[104]

The Productivity Commission has argued strongly that while the Coastal Trading Act cannot sustainably protect jobs from international competition, it does increase costs for the users of coastal shipping and the broader Australian community.

> In itself, protecting an industry to preserve jobs is not justified. The cabotage restrictions protect some jobs at the expense of growth in other industries ... Protecting an industry from competition not only harms consumers … but also reduces the incentives of the protected industry to improve its efficiency and competitiveness. Over time, the protected industry falls further behind foreign competitors, requiring ever more protection and increasing the cost to consumers and the community in general.[105]

The Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 proposes a number of improvements to the operation and administration of the Coastal Shipping Act. While the MCA broadly supports these remedial measures, they do not go far enough. The government should also:

- Introduce a single permit system allowing unrestricted trade for domestic and foreign vessels
- Ensure that Australian and foreign-registered vessels are subject to the same conditions of access and operation by removing the ability of domestic ships to contest voyages proposed by foreign ships.

[100] Data provided to the MCA secretariat by the Bureau of Infrastructure, Transport and Regional Economics, 9 May 2017.
[101] See Rio Tinto, *Our business: Aluminium*, viewed 30 November 2017.
[102] The Hon Warren Truss MP, then Deputy Prime Minister and Minister for Infrastructure and Regional Development, *Second Reading Speech on the Shipping Legislation Amendment Bill 2015*, Hansard, 25 June 2015, p. 7577.
[103] Commonwealth of Australia, *Explanatory Memorandum to the Shipping Legislation Amendment Bill*, pp. 52, 90f.
[104] ibid., pp. 49f, 83.
[105] Productivity Commission, *Regulation of Australian Agriculture: Final Report*, 15 November 2016, released on 28 March 2017, p. 392.

14. FREE TRADE AND OPEN INVESTMENT

- Australia is a trading nation that has long benefited from free flows of goods and capital. One in five Australian jobs is tied to international trade and exporting businesses tend to employ more people, pay higher wages and be more likely to survive than firms that focus on domestic markets only.
- Australia is usually a net importer of capital. Capital flows into Australia fill the gap between domestic savings and investment, alleviating the need for additional debt. Foreign direct investment is vital to the resources sector, facilitating transfers of technology, skills and capabilities, as well as access to global supply chains and export markets.
- The MCA submits that the Australian Government should encourage free trade and international investment by:
  - Building on Australia's network of free trade agreements which will open new markets for Australia's mining and energy industries, as well as manufacturing and agriculture.
  - Attracting international investment by streamlining and liberalising foreign investment screening processes
  - Improving analysis of inward and outward trade and investment flows and strengthening public support for trade and free trade agreements.

Importance of free trade to Australia

Australia's openness to trade and investment drives job creation across Australia. One in five Australian jobs are trade-related and exporting firms generally employ more people and pay higher wages than firms that focus on domestic markets.[106]

A February 2017 research paper by the Department of Industry, Innovation and Science concluded that companies that export have, on average, 23.8 per cent higher levels of employment compared to non-exporting companies. These employees earned on average 11.5 per cent more than employees from non-exporting companies. And when these companies exported every year, their wages grew a further 3.1 percentage points to 7.4 per cent.[107]

Similarly, a November 2017 working paper by Treasury found that average real wages are higher in exporting businesses (which tend to be more productive) and in businesses with foreign shareholders (which tend to be larger).[108]

Owing to their access to both domestic and internationals markets, exporters tend to have more certain and secure levels of demand. The Department of Industry, Innovation and Science found that exporters were about 8 per cent more likely to survive from one year to the next compared to non-exporters with similar firm characteristics.[109]

Further, households benefit directly from trade liberalisation. Removing tariffs reduces prices of consumer items, improving the standard of living of residents, especially low and middle-income earners. A study by the Centre for International Economics has shown that trade liberalisation policies adopted by Australian governments from 1986 to 2016 have boosted real GDP by 5.4 per cent and increased the average family household's real income by $8,448 a year, compared to what they would have been in 2016 without trade liberalisation.[110]

[106] Commonwealth of Australia, *2017 Foreign Policy White Paper*, p. 14.
[107] Razib Tuhin and Jan A. Swanepoel, Department of Industry, Innovation and Science, *Export behaviour and business performance: Evidence from Australian microdata*, Research Paper 7/2016, 9 February 2017, pp. 8, 17.
[108] Commonwealth Treasury, *Analysis of wage growth*, working/technical paper, November 2017, released on 8 December 2017, p. 58f.
[109] Razib Tuhin and Jan A. Swanepoel, op. cit., p. 18.
[110] Centre for International Economics, *Australian Trade Liberalisation: Analysis of the Economic Impacts*, 31 October 2017, p.11.

Importance of international investment to Australia

Foreign direct investment (FDI) is vital to the mining sector, facilitating transfers of technology, skills and capabilities, and access to global supply chains and export markets. Australia is usually a net importer of capital, requiring international investment to fill the gap between domestic saving and investment. This capital shortfall has been on average about 4 per cent of GDP over the past 40 years.[111] Without international investment, Australia would otherwise need to take on additional debt or forgo inflows of finance and technology.[112] At the end of 2017, there was around $3.3 trillion in foreign investment in Australia, nearly twice Australia's total GDP.[113] Further, foreign-owned companies employ more than 700,000 Australians.[114]

International investment has long funded the resources projects and technologies that make Australia a leading exporter of minerals. The value of FDI in Australia's resources sector increased eight-fold between 2001 and 2017, from $36.8 billion to $315.3 billion.[115] The resources sector is also the largest destination of FDI, accounting for more than 37 per cent of FDI, followed by manufacturing at 11.5 per cent of FDI. Over the same period, the number of Australians employed directly in the resources sector grew from around 80,000 to 220,000.[116] The value created by FDI in minerals is overwhelmingly retained in Australia and 77 per cent of revenues earned by the nation's major iron ore producers stay in Australia as payments to suppliers or taxes and royalties to governments.[117]

Many Australian mining companies are also major global businesses in their own right and pursue outbound investment opportunities around the world, generating additional benefits for their shareholders and employees, as well as contributing to development and growth in the countries in which they invest.

The case for encouraging international investment into Australia would be enhanced by better data on the contribution of foreign-owned businesses and the role of Australian-owned overseas affiliates in generating investment returns, export earnings, and investment inflows and outflows by industry. The OECD has noted that Australia needs more complete data on trade and investment by foreign-owned and multinational enterprises.[118]

As a key public good the government should provide additional funding for the collection of such trade data, which will improve policy analysis and public understanding of the benefits of the international investment system.

[111] Adam McKissack and Jessica Xu, *Foreign investment into Australia*, Treasury Working Paper, January 2016, released on 18 February 2016.
[112] Department of Foreign Affairs and Trade, *The benefits of foreign investment*, 3 June 2016.
[113] Department of Foreign Affairs and Trade, *Foreign Investment Statistics: Statistics on who invests in Australia*, June 2018
[114] Commonwealth of Australia, *2017 Foreign Policy White Paper*, p. 14.
[115] Department of Foreign Affairs and Trade, Australian Industries and Foreign Direct Investment, ABS catalogue 5352.0, May 2018
[116] Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly, Feb 2018*, ABS cat. no. 6291.0.55.003, released 29 Mar 2018.
[117] Port Jackson Partners, *Iron ore: the bigger picture,* policy paper commissioned by the Minerals Council of Australia, 7 July 2015, p. 22.
[118] Organisation for Economic Co-operation and Development *International trade, foreign direct investment and global value chains. Australia: Trade and Investment Statistical Note*, 2017, p. 8.